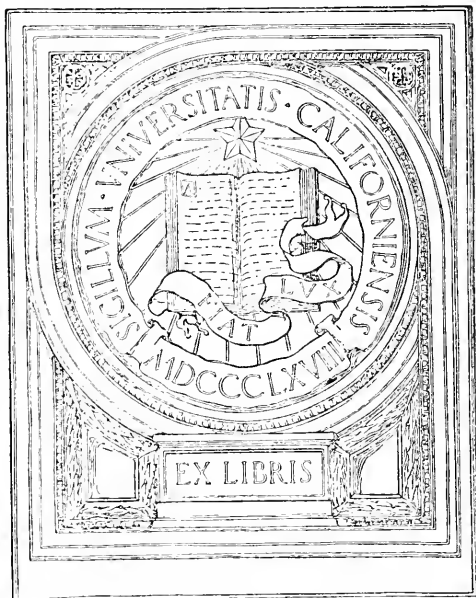


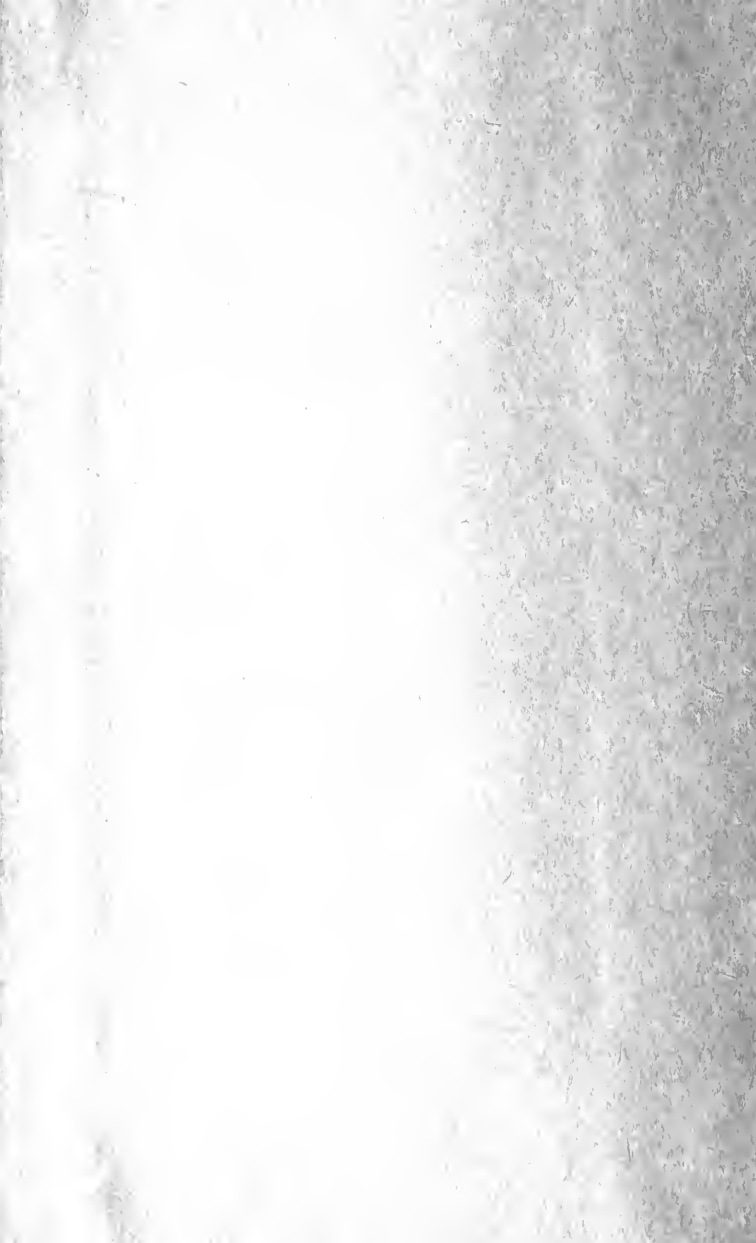


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“ FRIGHTFULNESS ”  
IN THEORY AND PRACTICE

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“FRIGHTFULNESS” IN  
THEORY AND PRACTICE  
AS COMPARED WITH FRANCO-  
BRITISH WAR USAGES

BY CHARLES ANDLER  
PROFESSOR AT THE SORBONNE

TRANSLATED FROM THE FRENCH WITH ADDITIONS  
FROM THE GERMAN “KRIEGSBRAUCH” AND  
THE ENGLISH “MANUAL OF MILITARY LAW”

T. FISHER UNWIN LTD.  
ADELPHI TERRACE, LONDON

*First Published in 1916*

ABRACADABRA TO MERRY  
CALISHA SOLITA  
YRABALLI

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## TRANSLATOR'S PREFACE

MY task in preparing this little book for the English public has been limited to translation, to the expansion of Chapters VIII. and X., and the compilation of the last chapter.

The author has left the facts very largely to speak for themselves. It is not for me, therefore, to obtrude myself here. Of one thing, however, I may usefully remind the reader. It is that the Conventions and other Agreements upon which International Law—and the Manuals of Great Britain and France—are founded, were signed *in toto* by Germany as well as by her opponents, and by practically all the civilised Powers.

Yet the rules of warfare professed, and still more those observed by Germany, differ very greatly, very painfully, from those observed and professed by her adversaries.

The explanation of this fact is simply that Germany vitiates all her rules of warfare by her exceptions. Rules are made to be kept by others; and by oneself, *except in case of necessity*.

Law, says the German, cannot contain war. War is greater than law. It makes its own laws.

The German thinker claims, too, that there can be no "civilised war." That is a matter of opinion. The reader of this note will, at least, agree that there can be a decent war, a gentlemanly war—to use a much-abused and almost obsolete term. And there can be—the reverse.

Let the reader turn to § 140 of the German "Usages of War on Land": "Good faith is essential in war, for without it hostilities could not be terminated with any degree of safety short of the total destruction of one of the contending parties."

Our enemies may come to appreciate this fact.

"Should it be found impossible to count on the loyalty of the adversary there is grave danger of war degenerating into excesses and indiscriminate violence, to avoid which has been the aim of the modern laws of war."

These two passages which I have underlined must make any thoughtful man reflect. The war occurred because good faith was deceived—because a solemn Treaty was violated for the purpose of facilitating

an utterly wanton attack on a peaceful Power. It has been fought hideously because Germany cannot, and will not, keep the provisions which she has signed in common with the rest of the world.

BERNARD MIALL.

*September, 1915.*



## INTRODUCTION

### THE USAGES OF WAR AND THE DOCTRINE OF THE GERMAN GENERAL STAFF

DURING the French Revolution the poor peasants of Mannheim or Kehl, or, in 1800, those of the plain of Marengo, did not take to flight when Desaix' army was approaching. "This time," they would say, "we have nothing to fear: these are M. Desaix' troops." Such words were spoken, too, at the approach of the armies commanded by Hoche, Kléber, and Marceau—who, when he died, was mourned by the enemy. But they have never been uttered on the approach of a German commander—neither in 1814, nor in 1815, nor in 1870. Neither will they be heard in 1915. For a German general "not to make himself feared" by the civil population would be a proof of incapacity.

It is not our intention to make complaints. That which each of us has seen with his own eyes, or heard related by reliable witnesses, is infinitesimal as compared with that tide of suffering which has overflowed Belgium, Lorraine, Champagne and

Picardy. None of us, unless he has suffered personally, has the right to a word of complaint. The victims will speak when their hour has come. The depositions of German prisoners, the route orders of soldiers and commanders—these will speak. But this is for a later day. The proofs that will convince the world are gradually accumulating. In the meantime complaint is unworthy of the Allied nations or of their armies. Complaint is only for the vanquished. Our reply must issue only from our 75's, our 47's. The humbler task of the student is *to understand*.



PART I

THE USAGES OF WAR AND THE DOCTRINE  
OF THE GERMAN GENERAL STAFF



# “FRIGHTFULNESS” IN THEORY AND PRACTICE

## CHAPTER I

### CLAUSEWITZ AND HIS DOCTRINE OF “ABSOLUTE WARFARE”

THERE is nothing unexpected about the present war. Germany has before this waged a war unmitigated. She has waged it with inferior resources, but with the same method. This we can see prefigured in the wars of 1813-15 and 1870; and it is foretold even more plainly in the official teaching of the theoreticians of the German Staff since the wars of German “liberation.”

Among the names of these theoreticians one is pre-eminent: the name of Karl von Clausewitz. It is a name to be spoken with deference. Clausewitz was a great writer and a great thinker; and incontestably, in his private life, a man of the purest

character. It is important to remember that from 1810 to 1816 he was professor in the Academy of War in Berlin, and in 1818 Director ; while in 1830 he was Chief of Staff to Gneisenau. France has had no military writer of this calibre. She has had Napoleon, to be sure : the greatest practician of warfare.

The basic idea of the teaching of Clausewitz is that every war is the expression of a certain period and a certain society. *Jede Zeit hat ihre eigenen Kriege*. But above the actual forms of warfare, relative and imperfect, there is another kind of warfare : war itself, savage and extreme, complete in its terribleness : *absolute* war. Clausewitz' great work, *Vom Kriege*,<sup>1</sup> which appeared in three volumes after his death in 1832, is the reconstruction of what this *absolute* war would be : a war of sheer calculation, complete violence, extreme lucidity and brutality. This abstract notion of warfare mathematically reduced to its absolute laws was by Clausewitz developed to its conclusion with all the impassive severity of a Spinoza.

" It is the part of theory to lay stress upon the absolute form of war. Whosoever wishes to learn a lesson from this theory will accustom himself not

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<sup>1</sup> Clausewitz. *Vom Kriege*. (*Werke*, 1867, Vol. III., p. 75.)

to lose sight of it, as the measure of his hopes and fears, so that he may approximate to it when he *can* and when he *should*."

Above the contingencies and imperfections that arise from the state of society, the period, and the races in question, the variable technique of war, the pursuit of various ends, and the differing talent of commanders, there is this absolute warfare, war without conditions or mitigations, "this fire unloosed with an elementary and irresistible fury." The eighteenth century was the period of complete military and social decadence: when the people whose destinies were at stake folded its arms and left its troops to fight at the command of the diplomats. War had become a cautious game, meticulously conditioned by rules; it was a species of bluff, full of laws and formalities, in which the opposing armies, followed each by its baggage-train, resting in costly encampments, played on a carpet of green turf a sort of learned *Kriegspiel*, which consisted of threatening demonstrations rather than of deadly blows. And the bourgeois, the peasant, was treated with every possible consideration. Frederick II failed to awaken the slumbering century, even by the thunderclaps of Rossbach and Leuthen; it needed the French Revolution, and a Bonaparte.

In the eighteenth century the army was a State within a State. It respected even an enemy population: for fear of reprisals, should a false move be made in the game of chess which was played with pedantic science. The Revolution made a clean sweep of these rules. It unloosed all the energies of the nation. Does Clausewitz find that it did not commit atrocities? Yes: this was because neither generals nor soldiers had as yet found their feet. For Clausewitz this was a "technical imperfection."<sup>1</sup> Then Bonaparte came. He brought with him perfection.

"The military power, based on all the forces of the nation, made such certain and confident advances in the art of crushing the enemy, that whenever it was resisted by a military force of the old school the result could never for a moment be in doubt."

Since Bonaparte's day warfare has been approaching its absolute form. It has realised fresh possibilities of action. With these it associates all the resources and all the energies of the nation.

The essential object of any war is to *destroy the armed force* of the enemy. It includes, of course, depriving the enemy of the means of renewing his army. Finally, it seeks to subdue the enemy's will.

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<sup>1</sup> *Ibid.*, III., 91.

The whole effort of a commander, then, is to attack the principal army of the enemy, impetuously, and with all the forces at his command, in order to annihilate it. The energetic prosecution of a war that is at last conscious of its extreme means of action involves: (1) Inhuman means of maintaining armies; (2) savage means of attack, even upon the civil population; (3) and savage means of defence. Or rather these epithets are inaccurate, for they belong to the domain of morals. Warfare knows only forces, and an end which justifies everything: the end of conquest. It permits all possible means to the will to conquer, even those which destroy the civil life of the enemy country. History does not demand a reckoning from the victor.

1. The armies of the Revolution abandoned the system of magazines, and the stupendous convoys which, although they used securely to maintain an army in the field, at the same time held it in a leash, since they forced it to guard its lines of communication and to cover its revictualling stations. The victories of the armies of the Revolution and of Bonaparte were due to their mobility. And this mobility was due to the fact that they were everywhere at home; they knew how to live on the country. This is the model to be followed. At the outset the Coalition complained of the method as

scandalous : then it imitated its masters, and even contrived, when it entered France, to excel them. The system of requisitions dates from that period—from 1792. It is brutal. It supposes "the executive power of detachments" demanding forced contributions. It is made practicable only "by the fear of chastisement and ill-treatment weighing upon the entire population." Requisitions have no other limit than "the exhaustion, impoverishment and destruction of the country."<sup>1</sup> The system of magazines was more humane. But humanitarianism does not perfect warfare : it hampers it. Those means must be chosen which intensify its energy.

Can we say that the increased severity of the present war appears to derive from the French Revolution ; that France suffered in 1814, and again in 1914, from an evil that she herself unloosed ? This was certainly the belief of Clausewitz when he was fighting in France. Needless to say, any method which intensifies warfare permits of an intensification of its atrocity. However, the system of requisitions, precisely because it allowed none but commanders to lay hands on the resources of the country invaded, was more likely than other methods to obviate pillage, and the institution of "notes of requisition"

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<sup>1</sup> *Ibid.*, II., 85, 86.



payable after the war was a form of compensation unknown to the older school of warfare. There are documents in abundance which testify to the humanity of the French leaders of the Revolution; and this humanity is one of the "technical imperfections" in their methods of warfare to which Clausewitz points.<sup>1</sup> None of them drew from these methods the consequences which were drawn by Clausewitz' most eminent disciple, Moltke, who, none the less, prided himself on being a gentleman. Bluntschli, in his "Manual of the Laws of War,"

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<sup>1</sup> There were lapses, of course. At Stuttgart they still remember that General Sainte-Suzanne left his hotel, in 1800, without paying his bill, which amounted to forty marks. All the millions that France has poured into Germany have been powerless to efface the memory of that unpaid bill. The officers, too, did a little too much junketing at the expense of the worthy Würtembergers. Heavy requisitions were imposed on Düsseldorf and Bonn, from 1794 to 1798, but this was on account of the poverty of the French armies. I think we may say there is a relation between the spirit of an army and the political system of the country which has recruited it. The old troopers of Napoleon's armies committed more numerous abuses than the young soldiers of the Republic, not only because they were more callous and war-worn, but because the aridity and the hard-hearted pride of the Imperial Government was slowly corrupting the

in 1880, had proposed the authorisation only of such requisitions as were “ in proportion to the resources of the country.” Moltke’s reply to this was as follows :

“ The soldier who endures suffering and privation, fatigue and peril, cannot content himself with taking [what he requires] only in proportion to the resources of the country. He must take everything that is necessary to his subsistence. One cannot ask him to be superhuman.”

2. It was always realised that provinces are devastated by warfare. This appeared to be a disaster inseparable from wholesale bloodshed. Yet it was not considered lawful to devastate a province out of mere wantonness, in a purely frivolous spirit. Read the reproaches of the Germans respecting the wasting of the Palatinate and the ruin of the Castle of Heidelberg. Read, in the most popular of French historians, in Henri Martin and Michelet, the profound *mea culpa* of France. Logically speaking, on the other hand, Clausewitz is obliged to regard the action of Louvain as technically correct. After the destruction of the hostile army, or in order to prepare

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*moral* of its armies. The same thing happened under the monarchy of Louis XIV, and we see it also in the German armies of to-day.

for its destruction, it is often necessary that provinces should be invaded.

“This will not always be with the intention of retaining them, but in order to levy contributions of war, or to devastate them. The sole object is at all costs to cause inconvenience to the enemy.”<sup>1</sup>

This may involve bloodshed. It is repugnant to the feelings to devastate an innocent population. But such populations provide resources for the enemy; or they would do so later on, should the enemy succeed in reconquering them. The provinces to be devastated are particularly those which cannot be retained. A sanguinary piece of work, a horrible spectacle! But one that will teach a lesson: and terrible lessons are often the most efficacious. Those who have felt the lash of our chastisement will think twice before attacking us. The war will be briefer as it is more terrible.

“I do not like to hear of generals who are victorious without bloodshed. There is no question of blunting the swords we carry. Sooner or later will come a man of war who, with a keen-edged blade, will cleave our bodies down to the arms that bear these swords.”<sup>2</sup>

Clausewitz does not see that the wars of the

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<sup>1</sup> *Ibid.*, I., 31.

<sup>2</sup> *Ibid.*, I., 269.

Revolution provide no data whatever in support of his theories, and that to illustrate them he has to hark back to the inexplicable crime of Louvois, or the memories of the Thirty Years' War.

3. Revolutionary France made war by means of the levy *en masse*. By this means it infinitely enlarged and intensified " the process of fermentation which we call war." Prodigious means of warfare were introduced by the French. They were created for the defence of France, but they also flung her forward, in an offensive of unparalleled energy. Is this intensification of warfare salutary to humanity? This is a problem which Clausewitz professes to leave to the philosopher.<sup>1</sup> The military technician should concern himself only with the new improvement which this national uprising (*Volkskrieg*) effected in the methods of warfare. It greatly improved these methods, but it also modified the personality of the belligerent. In the eighteenth century the belligerents were kings and ministers, whose domestic policy inclined to a despotic but intelligently progressive paternalism. Wars broke out between monarchs, as boundary disputes between neighbouring landowners. They were decided one way or another, but the disputants endeavoured not to damage the

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<sup>1</sup> II., 297.

territory which was the object of conflict. Since the Revolution, in democratic countries, war is not conducted merely by the general invested with the chief command, but by the anonymous crowd, whose opinion it is, in the last resort, that directs the democracy. It is the anonymous crowd that has to be subdued: has, therefore, to be terrorised. By what means? Here we can but admire the method of the Prussian generals. They have always attacked revolutionary France by the means which she herself invented for her defence. They have ventured to turn against her, in an even more furious attack, the practices of her desperate defence. They have endeavoured to prevail over the confused and frantic impulse of revolution by means of the disciplined national fanaticism of the Prussians. This is paradoxical, but, as Clausewitz demonstrates, it is possible. The modern German Staff has drawn practical conclusions from his demonstrations. The doctrine of the modern German Army, by means of a constant deviation, converts the revolutionary methods to the service of military feudality. It subjects them to a sort of scientific impressment. But it is an abuse of words to mask, under the terminology of the Wars of Independence, methods of warfare which could be justified only by the desperate resolution of a defence driven to its last intrenchments.

The fact remains that the great adversary to be overcome is this very desperation of the people, should the latter be fighting for some great cause which feeds its revolutionary enthusiasm. To overcome this desperate fury this method furnishes only one moral weapon : terrorism. The great difficulty in war is to preserve that coolness of judgment which thinks out the blows to be struck while it parries those received : to preserve that lucidity of mind without which it is impossible to see far ahead. These are qualities rare in a single commander. It is all the more difficult, therefore, to impress them upon a whole people, which governs itself by means of opinion, and which fights with the utmost nervous sensibility. In a war waged by a military monarchy against a democracy terrorism is therefore an indispensable weapon. By means of terrorism we obscure the understanding of the adversary and paralyse his will to conquer. No humanitarianism can prevail against the necessity of obtaining this capital military result.

## CHAPTER II

### THE LANDSTURM LAW AND THE MILITARY PRACTICE OF PRUSSIA FROM 1813 TO 1815

ABSOLUTE warfare—that is, warfare *à outrance*—was first introduced by the Prussians in the form of a defensive war. The Prussian Government, on April 21st, 1813, promulgated the law known as the “law of the *Landsturm*”; a measure drafted by Bartholdi, a fanatical civil official, in order to organise a general levy. This law is of great importance. Of course, it was never applied completely. The large towns of Prussia soon took fright when they saw, pouring into their streets, a populace armed with pitchforks, pikes, and clubs, for that was what this law called forth. Various revisions mitigated the law of 1813; it was last remodelled in 1875. However, the statements of the German soldiers taken prisoner to-day by the French are all consistent in proving that it is the text of this law, which has not been repealed, which authorises the German atrocities; atrocities

tolerated and encouraged in the ranks by commanders who themselves, it may be, are saturated in these same pedantic and bloodthirsty sophistries.

Historians like the Pan-German Treitschke state that this law " demanded the impossible of a civilised population," and that " in its complete application it would have given war the imprint of a fanatical barbarism." <sup>1</sup> Paragraph 7 of this law is notorious. " A war," it states, " in which the *landsturm* is called out is a war of desperate defence which justifies all means—*ein Kampf der Notwehr, der alle Mittel heiligt.*" It continues: " The most drastic means are the best ; for they give the completest victory to the rightful cause." The German cause was rightful in 1813. Are we perhaps too scrupulous, if we consider that even justice may be smirched by certain means ? There was a recent conference at The Hague, at which the contracting Powers professed to attribute very extensive rights to the citizens of a country forced to defend itself against a brutal aggression. The German delegate, Baron Stengel, was careful to protest, holding that too extensive rights were granted to the defence if the rights of aggression were too far restrained. This

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<sup>1</sup> Treitschke, *Deutsche Geschichte*, I., 441.



nobleman is the ideal German diplomatist. Germany is naturally anxious to limit the rights of defence, when she considers that her part would necessarily be that of the aggressor. When she herself is attacked she claims the right to defend herself by all and any means.

The "drastic" means behind which she took refuge in 1813 were as follows :

§ 1.—Every citizen is required to oppose the invader with *all the arms* at his disposal, and to prejudice him *by all available means*.

§ 39.—The *landsturm* will not wear uniforms, in order that it may not be recognisable.

§ 43.—The charges of muskets, if balls are lacking, may consist of any sort of coarse granulations of lead or iron.

§ 64.—Espionage, far from being despicable, is a duty.

§ 65.—The governors of our provinces may find it necessary to cause certain regions to be evacuated by their inhabitants, and to reduce these regions to a state which will render the sojourn of the enemy impossible, by depriving him of all means of subsistence.

§ 70.—In the first place all stores of flour must be removed or destroyed. Liquids such as beer, wine, and brandy must be poured

away. Windmills will be burned and wells will be filled in.

§ 79.—It is forbidden, under pain of death, to take an oath at instance of the enemy. An oath obtained by force is not valid.

We have no example of a more drastic law than this; it exceeds even the English law of 1801, by which it was inspired. But it is not of this that we complain. We can understand the revolutionary frenzy which attacked Prussia in 1813. What we cannot admit is the sophistry, according to which, probably by intention, and by a historical falsification of the entire primary education of the country, at the moment when Germany flings herself forward in an offensive which so far has not only protected her hearths, but has trampled underfoot two particularly peaceable neutral countries, her commanders and her troops are informed: "The *landsturm* is called out. The law which has governed it since 1813 has not been repealed. All means are declared allowable by this law; and the most drastic means are the best. This law, promulgated by a King of Prussia, we shall now apply."

This sophistry is itself historic. Take the case of the war waged upon France by the Allies in

1814-15. They did not dare to utilise the hordes of their *landsturm*, armed with pitchforks, pikes and hatchets. They were poured into their regiments of *landwehr*. Mediocre soldiers, despite idealisation by the poets, these regiments were expert in pillage. We may read in the documents of the time the toll of the exactions then enforced.<sup>1</sup> But it must not be supposed that the Austro-Prussians permitted the enemy the methods which they applied themselves. Napoleon, too, had ordered a general levy. The Allies shot down the inhabitants who obeyed the order, although all Frenchmen were under a strict legal obligation to do so. Communes which rang the tocsin to announce the approach of the hostile armies were burned by Schwarzenburg.<sup>2</sup> Blücher writes, after La Rothière, on February 4th, 1814, that he has caused the villages to be burned and the inhabitants to be shot by groups, because some shots were fired at the Prussian troops.<sup>3</sup> The

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<sup>1</sup> For example, the *Erinnerungen aus dem Jahre 1813, aus dem Tagebuch eines Freiwilligen*, 1820.

<sup>2</sup> Order of March 10, 1814.

<sup>3</sup> See numerous instances in Henke, *Darstellung des Feldzugs der Verbündeten*, 1814, and an intelligent account of atrocities in a little book by a young jurist, Kurt Schönlink: *Die Anwendung des Kreisrechts in den Feldzügen der Befreiungskriege*, 1814-15, 1910.

Duke of York hanged the French soldiers of these hurried levies as brigands, when they were taken with arms in their hands but without uniforms. If the German stragglers came to any harm it was necessary to take reprisals. The volunteer whose *Erinnerungen* I have mentioned saw a French priest tied up in straw and burned alive because he killed some marauders. Some Prussian hussars, whose non-commissioned officer was captured by the peasants, revenged themselves by hanging the peasants head downwards.

Need we describe their treatment of their prisoners? It was already the usage of war to spare whosoever threw down his arms and offered to surrender. Infractions of this usage were innumerable during the whole course of the war. Let us recall the fifteen Frenchmen who, at Bautzen (on a day of bloody victory), being surprised within a house, demanded quarter on their knees; the infuriated Prussians flung them living from the windows, and when the survivors cried aloud in their agony their skulls were smashed by blows of the butt-ends of muskets. At Leipzig, in the houses, a host of Frenchmen who had thrown down their arms was massacred. After Waterloo the Prussians of Gneisenau's command gratified themselves by a wholesale slaughter of disarmed French-

men, killing them by whole battalions. Larrey, the illustrious surgeon, in the midst of his ambulance work, was pierced by the lances of Uhlans ; and the Saxon General Reyssel would have had him shot but for a German surgeon, Siefert, who succeeded in saving him.

As early as 1813 it was remarked by Zschokke that the French treated their prisoners better than the Allies did ; and a Berlin author, Karl Bleibtreu, although an infatuated Teutomaniac, has related how the Prussians treated theirs : trampling them underfoot in the mud, robbing them, abandoning them to the fury of the soldiery in Berlin, and confining them, without even straw, in the filthy jails intended for common criminals. The French generals, after Kulm and Nollendorf, in 1813, were exposed like animals to the curiosity and the vile insults of the people of Berlin. We are citing only examples. We know how easy it is to suppress atrocities. The miseries of a war are never known in all their immensity. We do not say that no French army has ever been guilty of violence. But nothing will ever persuade us that the Austro-German armies have afforded history nothing but examples of Christian moderation. The philosopher Steffens, officer of the *landwehr*, in 1814, saw them at work during a whole winter. He saw

"incendiarism almost everywhere. Magnificent villas completely pillaged, the furniture and mirrors in fragments; the windows shattered, and all that was concealed—money and articles of value—stolen. In the cellars they staved in the barrels, instead of letting the wine run from the spigot. The soldiers were splashing about in a sea of wine. . . . Many grew intoxicated by drinking from this flood, without even taking the trouble to collect the wine in bottles." <sup>1</sup> His conscience was revolted when the Allies systematically destroyed the weaving-looms and the spinning-mills, so that French industry, deprived of its implements, was thrown back thirty years. At that time a German "intellectual," even an intemperate patriot like Steffens, had the delicacy to feel remorseful, and the courage to protest. The "intellectuals" of to-day take a pride in participating in the work by which the German armies are celebrating, before our eyes, the centenary of 1814, with that refinement of ferocious pedantry which endeavours to push to its practical conclusion the concept of absolute warfare. Then, with the candour of unconsciousness, in which there is, I am persuaded, nothing of hypocrisy, but only the

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<sup>1</sup> Steffens. *Was ich erlebte*, 1843, Vol. VIII., 35, 37, 41, 43 *et passim*.

most ingrained Pharisaism, they thank God for having made the German army what it is—that is, the paragon of discipline and all the virtues, an army visibly accompanied by God Himself. In such a case we would prefer the evidence of the invaded populations. We have yet to hear of a German army that has deserved, on evacuating a province, the testimony which the enemy offered in respect of the French army which occupied Berlin from 1806 to 1808. When General Saint-Hilaire, having restored the keys of the evacuated city, went, on behalf of Davoust, to pay his respects to the old Prince Ferdinand of Prussia, at his dwelling on the Wilhelmsplatz, this prince, although he had lost his son Ludwig Ferdinand in the war, spoke to Saint-Hilaire of “the equity and the justice which had inspired all the proceedings of the commandant of Berlin.” No less than Davoust were his predecessors—Soul, Victor and Clarke—noted for their kindness. As for the troops, an official historian of Prussian affairs was able in these words to sum up the impression which he received from contemporary witnesses of the French occupation: “Polite by nature, the French were not inaccessible to the hints which they received, and the women, especially, enjoyed pleasant relations with the agreeable conquerors—I mean nothing but

what is honourable."<sup>1</sup> It is true that these troops, once victorious, did not ask themselves whether they had realised the ideal of "absolute war."

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<sup>1</sup> Granier, in his description of the occupation of Berlin by the French troops in 1806. (*Hohenzollern-Jahrbuch*, 1905, p. 14.)



## CHAPTER III

### THE DOCTRINE OF THE GERMAN GENERAL STAFF SINCE 1870

THE Germans believe themselves to possess the best disciplined army in the world, because it excels in combined movements. They do not acknowledge the brutality of their troops the moment they are no longer under the eyes of their commanders. Here we shall accuse only these commanders; we shall speak only of the brutalities which they systematically incited.

The authentic accounts of excesses committed during the war of 1870 alone would fill a library. "For many Germans," wrote Nietzsche, "this was a voyage into a more elegant hemisphere." The armies were "followed by waggons heaped full of our furniture, our pictures, the treasures of our homes, which became articles of commerce. This war had the character of the invasions of antiquity."<sup>1</sup>

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<sup>1</sup> General Ambert. *Récits militaires*, Vol. II., p. 56. Official inquiries were held in respect of all the depart-

Need we recall the protest addressed by Cardinal Bonnechose, on March 13th, 1871, to the Duke of Mecklenburg, in which he described the pillage 'which, on the passage of the armies, recurred with mathematical regularity'? Need we speak of Bazeilles, where von der Thann punished the villagers for an unknown fault, which was committed before the capitulation, and which should have been covered thereby? Need we speak of a whole village burned to the ground by means of incendiary bombs, after the most horrible orgies; of the massacre of sixty innocent villagers, subjected to a long martyrdom, and at length shot and thrown into the wells? The peasants of Bas-Rhin were forced to work under the lash at the German batteries in front of Strasburg, while their houses were plundered, as a punishment for having deserted them. When a French balloon passed over Saint-Germain the commune was punished, although it had nothing to do with the incident. When Mezières and Parmain were occupied by *francs-tireurs* General von Bredon bombarded Mezières, and the mayor of

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ments invaded. In the department of Seine-et-Oise alone the loss suffered by private persons due to pillage and systematic destruction was estimated to reach the sum of £1,200,000. See Desjardins, *Tableau de la guerre des Allemands dans le département de Seine-et-Oise*, 1873.

the village was trampled under foot by horsemen; Parmain he burned. At Mainville, after the armistice of the latter part of January, when hostilities were already terminated, and peace, as every one was aware, was close at hand, a peasant by the name of Rabot thought he might light a lamp at the approach of night. The Germans entered his house, outraged his daughter, murdered the father who tried to protect her, shot down his brother, and wounded a nephew.

Instances of cruelty were innumerable. But if we cannot number them we can classify them. At Saint-Germain, near Paris, three German dragoons disappeared. When they were really wanted they were found. In the meantime Saint-Germain must pay £4,000 or suffer bombardment. This was *blackmail by threat of bombardment*.<sup>1</sup> At Mons a war contribution of £160,000 was imposed. But simultaneously the inhabitants were *individually* plundered, robbed, crushed by requisitions, although the "war contribution" was expressly supposed to

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<sup>1</sup> I cite the facts and the expression from M. Paul Lacombe's *La Guerre et l'Homme*, 1902. I am glad to draw attention also to an able article by Mlle. G. Bianquis, Doctor of the University of Paris, in *Foi et Vie* (November 16th, 1914). This contains much interesting matter.

protect them from such treatment.<sup>1</sup> This was the *cumulative punishment* which the resistance of Chanzy cost them. At Rahay, when the Germans entered, twenty of the inhabitants were beaten, pinioned, and imprisoned in hovels; the mayor, M. de Jaubert, was clubbed to death. At Conflans, in January, three hostages were forced to run barefoot behind military wagons driven at a trot. This was *preventive punishment*. But whether in La Sarthe, where the officers of Frederick Charles were in command, or in the neighbourhood of Paris, under the direct orders of the General Staff, or on the Marne, where the cavalry leader Julius von Hartmann was operating, the method was the same. Already, to quote General Ambert, it was “ the war of terrorism.”<sup>2</sup>

Of these officers General Julius von Hartmann interests us particularly, because he has, since the war, taken some trouble to formulate his practice, to express his doctrine.

For these looters and murderers have a doctrine. They elude the more humane endeavours to codify warfare so long as these are of such a nature as to restrain their will. But they bristle with pedantic

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<sup>1</sup> General Ambert, *op. cit.*, II., 62.

<sup>2</sup> *Ibid.*, II., 56.

axioms when these axioms serve their purpose. M. Louis Renault, Membre de l'Institut, has candidly expressed his amazement, as a jurist, when he saw the German generals trample underfoot the conventions which the German Government had signed, by the hands of its own delegates, at successive Conventions at The Hague. His amazement will not be shared by those who are acquainted with the tradition of the German General Staff. This has been clearly defined by Julius von Hartmann. His articles on "Military Necessities and Humanity" (*Militärische Notwendigkeit und Humanität*) are the official reply of the Prussian Ministry of War to the proposal for a *Codification of the Laws of War* elaborated by Bluntschli, in 1877, in the name of the Institute of International Law.<sup>1</sup> They are of the greatest interest and importance. They explain all that is happening before our eyes; the examples of lofty and considerate chivalry which the enemy has exhibited in rare instances, which we may one day describe, to his honour, and also the cynicism of atrocity of which we have only too many revolting proofs.

The doctrine of the German General Staff derives

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<sup>1</sup> General von Hartmann's articles appeared in the *Deutsche Rundschau*, Vols. XIII. and XIV. (1877-78).

immediately from the Prussian conservatism. It is a doctrine which expresses that realistic romanticism which has maintained in Germany an arrogant spirit of traditional authority, which the positivist rationalism of the nineteenth century has attacked, but has hitherto been unable to break down. When the French of Napoleon's day took the new Civil Code into Germany the romantic jurists protested against the rationalistic innovation. The Prussian *Landrecht* itself, which was codified by Frederick II, was for them an object of hatred and suspicion. To profess to formulate and prescribe, in written laws, the social relations which are based only upon custom; to define by statutes the living bond between man and man, based as it is upon an obscure ancestral sentiment and an unconscious collective will; to do this is to attempt to replace life by intellect—an impossible undertaking. When Frederick William IV was asked to grant a Constitution he resisted for a long time, declaring that he would not have a “ scrap of paper ” interposed between himself and his people. Now more than any other social activity war is an instinctive thing, a reaction of profound and obscure feelings, an explosion of all those forces which heredity has deposited in the depths of one and all. How, then, could there be a codified law of warfare? Every-

where the law of custom precedes the written law. How should it be otherwise in the matter of war? Custom can in the long run be reduced to writing, no doubt; and it would be possible to state what were the usages of war at a given period. But such a task would be merely the idle amusement of civilians, to be ignored by the impetuous fury of battling wills. Thrown into such a furnace, what signifies a sheet of paper signed at Brussels or The Hague? General von Hartmann derides the idea. How could a German army, the organ and the living representation of the collective German thought, allow itself to be commanded by the ermine-clad tabbies of the law, or by a Convention of gold-laced diplomatists? The collective mind of a nation risen in war creates history: it *makes* the law; it does not obey it.

We must not, therefore, require the chiefs of the German army to obey a "law of nations" in which they do not believe, and which is not codified by any authority recognised by them. A Government may admit of a Law of Nations; and the German Government does not always count itself exempt therefrom. But soldiers cannot allow their initiative to be confined by such a law, because the military force is sovereign. From the moment when the Government makes appeal to force it no longer

admits the “law of nations.” The theory of the “scrap of paper” which in July, 1914, amazed the British Ambassador in Berlin was not, on the part of Bethmann-Hollweg, the angry freak of a diplomatist caught napping and losing his head. It is the old Prussian conservative doctrine: it has lived on, more fully than elsewhere, in the German army. Bismarck in his day stated that “international conventions are not to be measured by the standard of the law.” The real faith which props up treaties is—force. When forces move, treaties crumble. Only those international conventions are lasting which possess “a majority of bayonets.”<sup>1</sup>

When a Prussian Government declares war it does so because it believes itself to be supported by the force which creates treaties, and which also, where they are irksome, tears them up. This is why Herr Bethmann-Hollweg was sincerely astonished by the British scruples once war was decided upon. It seemed to him amazing that a small British army should come butting into a Continental conflict, in which Germany would obviously prevail by force.

Thus if, on the outbreak of war, the military

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<sup>1</sup> Bismarck. Speech before the Prussian House of Peers, January 21st, 1863.



force is sovereign, it can observe neither the *conventions* determined by treaties nor a so-called *code* of warfare. It follows the *principles* which it prescribes for itself: it accepts the tutelage neither of jurists nor of diplomatists. Now Clausewitz taught that there is one principle in war: namely, to conquer. There can be no question of enfeebling the command by limiting the means of attaining this one end, means of which the command is the sole judge. A German officer recognises only "*military necessities.*"

"The suffering and loss of the enemy are the unavoidable conditions without which one can neither bend nor break his will. From the moment they are capable of achieving this particular object they are unassailably established."<sup>1</sup>

Even the jurists, with Bluntschli, admit military necessities, a *Notrecht*, which anticipates inevitable violence. This is a grave concession.

War as a whole is necessity, and if violence shortens war, says von Hartmann, humanity can only be the gainer by that violence.<sup>2</sup>

The jurists, since the eighteenth century, have

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<sup>1</sup> Julius von Hartmann, *loc. cit.*, Vol. XIII., p. 126.

<sup>2</sup> *Ibid.*, Vol. XIII., p. 119. "Violently fought wars run a short course."

been pursuing a chimera; they have sought a contradiction in terms, a *civilised war*—the tedious crotchet of a lawyer. “We understand by civilisation,” says General von Hartmann, “the equilibrium between rights and duties, which serves as the foundation of the internal social organisation of the nations and is guaranteed by institutions; so that the expression ‘civilised warfare,’ used by Bluntschli, seems hardly intelligible; for war destroys this very equilibrium.”<sup>1</sup>

Can we object that criminality also is a rupture of the social rights, and duties? And that war is therefore generalised crime committed to order? No: “Murder, brutality, robbery under arms and pillage remain crimes in times of war as in times of peace.” Different aims make of the same action a crime or an act of prowess. All violence necessary to victory is sanctified, or at least allowed. But by what criterion are we to distinguish crime from permissible or meritorious violence?

“It is obvious that the actual appearances will scarcely ever permit us absolutely to distinguish between the two categories of activity of the

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<sup>1</sup> *Ibid.*, Vol. XIII., p. 123. Later he remarks: “Wars can be fought humanely but not in a civilised manner.”

belligerents.”<sup>1</sup> War authorises any murder and any violation of the right of property entailed by military activities. It does *not* authorise these same actions when no military utility results therefrom. This is difficult for a civilian to conceive. Surely military utility will always result from violence, since the enemy will suffer prejudice thereby? In any case the German general will not, on this point, admit theories regulating every individual case, nor minute regulations—the “Procrustes bed of theory.” The German military authority will recognise only those rules which it prescribes for itself. These will not all be abominable. War unlooses all the passions, noble and furious alike. The commanding authority and its agents are men, who are swayed by the instinct of conservation, raised to a pitch of sur-excitation, and by the deep-seated motives of inveterate custom, duty, honour, and conscience; by an innate sense of equity, and by all that heredity has accumulated for them, or education taught them, of what is clean and strong. It is necessary to rely on these instincts; even in the fury of massacre these noble energies, if the necessities of action leave any room for them, will find their outlet.

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<sup>1</sup> *Ibid.*, Vol. XIII., p. 117.

They will not respect the conventional structure of "civilisation"; but a nobly impassioned "humanity" may find expression even in the atrocity of war.

Let us understand this point. Von Hartmann's idea, evidently, is that every German leader will be chivalrous, always, and in a degree compatible with the stern duties of war, and he will be able to inspire his subordinates with the same spirit of chivalry. Those who have seen these leaders and their subordinates at work will be less confident. For Julius von Hartmann, every German officer is a gentleman. Over and over again, during the last century, we have seen what remains of this spirit of gentleness in presence of the "necessities of war" of which these soldiers consider themselves the sole judges. The more scrupulous admit that discrimination between the crime and the licit act is a delicate matter. Now we cannot continue to live in this state of uncertainty. "Civilisation" demands something more and will impose more; it cannot content itself with this peculiar chivalry—a luxury, which these fantastic leaders wear on holidays like a new uniform, to exchange it, on other days, for the sordid garb of the every-day brutalities of battle. As for those who do not recognise these rights of civilisation, civilisation considers itself justified in calling

them barbarians, and will treat them as such when their hour has struck;

So we must not be surprised that Julius von Hartmann, the theorician of the military mind, and Clausewitz, the rationalistic theorician of warfare, arrive at the same conclusions at a distance of fifty years. The rational "concept" of Clausewitz, carried to its extreme conclusion, meets the unmeasured "passion" of Hartmann. But Clausewitz deduced possibilities which could be foreseen. Von Hartmann relied upon the motive forces of instinct, and their sur-excitation.

Above all they are in agreement as to the means of warfare.

1. In the first place, every war is at present national. So we can no longer distinguish between the *personal* and the *material* means of warfare, since the belligerent nation, as a whole, will furnish the one and the other.

At the very least, requisitions must be unlimited, so as utterly to exhaust the resources of the enemy country occupied. "Such requisition it is that defines the extent of the sphere of movement of the armies and renders possible the decisive strokes which result therefrom."

More: among the material means of war there are *direct* and *indirect* means. All wealth, even

beyond the military equipment and provisioning of the enemy, is an aid to his recovery ; all external wealth (and orderly capacity for work—*wirtschaftliche Leistungsfähigkeit*) is to be destroyed.<sup>1</sup> Can it be claimed that the goods of the private individual should be spared ?

“ It might be disastrous,” says von Hartmann, ‘ to distinguish between the public domain and private property. The moment will decide what must be done ; and in the haste of action it will often be impossible to judge and estimate according to laws and regulations.’<sup>2</sup>

In the national wars of the present day there is a complete solidarity between the State and its citizens, between the government and the population. For this reason military authority can no longer distinguish between combatants and non-combatants. When a people such as the French of 1870-71 calls 6·5 per cent. of its population to arms, “ how recognise as pacific the remainder of the population ” which supplies these vast effectives ?<sup>3</sup>

<sup>1</sup> *Ibid.*, Vol. XIII., p. 455.

<sup>2</sup> *Ibid.*, Vol. XIII., p. 462.

<sup>3</sup> At first sight this does not seem a very large proportion, but we must remember that it is equivalent to 13 per cent. of *all* males—perhaps nearly 40 per cent. of males of military age.—(B. M.)

It is essential to strike at the opposing "force," at the very sources which feed its energy. There is no longer a law of nations in a war which sets out to subdue the will of a whole nation in arms. *Der Krieg verlässt die Basis der völkerrechtlichen Erledigung.*<sup>1</sup>

Scharnhorst, in 1813, was able to speak of making a desert of all Hanover. All the more, according to Hartmann, were he in an enemy country, and especially were he retreating, must he proceed to work the devastation which the Prussian system of defence regarded as necessary in the German provinces themselves.

2. The jurists have exhausted their ingenuity in attempts to limit the castigation of civil populations. An eminent Belgian, Rolin-Jacquemins, and the Germanised Swiss Bluntschli, had protested against certain methods of warfare, which were intended to terrorise :

"Military realism," says von Hartmann, "when it hears of such objections, shrugs its shoulders in silence. . . . The moment a national war breaks out, terrorism becomes a necessary military principle."<sup>2</sup>

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<sup>1</sup> Julius von Hartmann, Vol. XIII., p. 128.

<sup>2</sup> *Ibid.*, Vol. XIII., p. 402.

Simple civilians, of British or Gallic civilisation and culture, should mark well what is the real nature of the "chivalry," the *Gesittung*, and the "humanity" of the Prussian junkers.

"Terrorism is seen to be a relatively gentle procedure, useful to keep in a state of obedience the masses of the people, which have completely emerged from their juridical condition in times of peace."<sup>1</sup>

The enemy demands of the invaded population certain services, which are often in conflict with the law of the occupied province. The sanctions of this law are stubborn, and the sentiment of the citizens supports it. To silence patriotism and the sentiment of traditional legality, the only means available is dread of punishment by the enemy.

It is idle to discuss the matter in detail. In 1870 the ambassadors of the neutral countries sought to prevent a bombardment of Paris by referring to the authority of a great eighteenth-century jurist, Vattel. They might have saved themselves their trouble. The laws which war makes for itself have no need of an authority to sanction them. No Vattel can add or subtract a

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<sup>1</sup> *Ibid.*, pp. 462, 464.



jot from the right which the belligerent derives from force. The problem is to subdue, to shatter, the energy of the adversary. If that end is attained by unloosing means which, with the violence of a natural cataclysm, stupefy his senses, exasperate his nerves, and envelop him day and night in an atmosphere infernally alive with paralysing dangers, we must see therein one of the "moral ingredients" of the struggle, whose legitimacy is to be measured by their efficacy.<sup>1</sup> There is a difference of opinion as to the right of bombarding fortified towns. Some would permit the belligerents to bombard only the military works which surround them. This is a childish distinction. One has the right to bombard not only fortified towns, but all towns, and even the smallest villages, when military action calls for such bombardment. And such action is to be judged not by the law of nations, but by the military authorities only.

It might be supposed that the doctrine of Julius von Hartmann involved no one but himself. But an official publication of the German General Staff, which achieved a certain notoriety and which to-day is an indispensable *vade-mecum*, persuades us

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<sup>1</sup> *Ibid.*, Vol. XIII., p. 470. "Das sind moralische Ingredienzien des Kampfs."

of the contrary.<sup>1</sup> The entire German General Staff protests against the attempts made at Brussels and The Hague " whose aim is to produce an evolution of the means of war in a direction completely opposed to the nature and the objects of every war." <sup>2</sup> It seeks, as did von Hartmann formerly, to " guard the officer against exaggerated humanitarian ideas." " Often the only real humanity," say the officers of the Berlin Staff, " consists in employing, without mitigations, the necessary severities of war."

How should there exist a written law of warfare ? Its only sanction would be the fear of reprisals. This fear is sufficient, even without a law. Usages, customs, and obvious self-interest have resulted in " voluntary moderation," whose necessity to-day has received the tacit assent of all armies. This phrase, " obvious self-interest," is full of meaning. We must be sure that we understand it. Why, asked von Hartmann, do we no longer indulge in pillage ? Because pillage destroys the discipline of armies. It is therefore to our interest to replace pillage by " a methodical military economy." <sup>3</sup> It follows that

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<sup>1</sup> *Kriegsbrauch im Landkriege*, 1902. Known in this country as the " German War Book." <sup>2</sup> *Ibid.*, p. 7.

<sup>3</sup> Julius von Hartmann, *op. cit.*, Vol. XIII., p. 117.

if a means were discovered by which pillage could be disciplined (for example, by the organisation of a "service of war prizes"), it would no longer be inimical to the "obvious self-interest" of the pillaging army. It would help to attain the principal military object, which is to enfeeble the enemy.

"Any means of warfare may be employed without which the aim of the war could not be achieved; while, on the contrary, all acts of violence and destruction which are not necessitated by this aim should be rejected."

This is the elastic formula to which the German General Staff adheres. So long as there is no military necessity, religion, civilisation (the General Staff does not share von Hartmann's dislike of this word), and the spirit of chivalry—a whole heritage of ideas transmitted "without the aid of writing" may find employment. But the essential point is that they should be transmitted "without the aid of writing." The German generals, whom Bismarck reproached for their bureaucratic habits, have an extraordinary dislike of ink and paper, when it is a matter of entering into engagements. It is obviously better to be able to say, after the commission of any act of violence, that it was "necessitated by war." And in case of doubt it is better to leave brutality a very wide margin, for

fear of weakening the officer who needs guarding against exaggerated humanitarian ideas.

Now, how is it that the German General Staff itself enumerates a number of prohibited means? For certain means of warfare are prohibited in black and white :

(1) The employment of poison in poisoning wells and provisions; and the diffusion of contagious diseases.

(2) Assassination, proscription, and the setting of a price on the heads of enemy officers.

(3) The employment of arms which cause useless suffering (as explosive or *dum-dum* bullets).

(4) The murder of the wounded or prisoners.

(5) Refusal to give quarter to soldiers who have laid down their arms.

Why is it especially abominable to employ poison, or assassination, or to refuse the embarrassment of wounded or prisoners? May not the enemy suffer decisive prejudice thereby? Prudence will command one to beware of using such means. The German General Staff sees " a return to the barbarous methods of conducting warfare " in the introduction of Algerian sharpshooters, Africans, and Mohammedans on the European battlefield. We

ought to be prepared to find, among the German "intellectuals," a Treitschke or a Freytag protesting their astonishment that an army which called itself the "army of justice" should at various points on its front reveal dusky or negroid faces. But even if the Germans try to pretend that the Arabs and the Kabyles of French Algeria are negroes—although their Mohammedan civilisation, mediæval though it be, is a noble and ancient civilisation—do they imagine that a civilised population would less readily trust to the Arabs, who do not use alcohol, than to the squads of criminals in common law loosed upon us with incendiary engines in their hands, or the drunken blackguards who were captured by the hundred in the cellars of Champagne? Such matters will not bear discussion. The truth is that the German Staff endeavours to prohibit such forms of violence as may enfeeble it; but it authorises those that are likely to serve its purpose. Is it not written: "*The territory of neutral States cannot be utilised by either belligerent for its military operations*"? Did it not protest, for a whole century, against the passage of French troops through Prussian territory in October, 1805? Did it not agree that Switzerland was in the wrong when in 1814 she allowed the Allies to cross her territory? But a written protest, a retrospective and written

condemnation, does not bind a German soldier. Such written words evaporate before "military necessity." Once again in 1914 was the old German theory applied, when the German authorities judged that "the end of the war could not be attained" without the violation of Belgium.

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The task of the historian is completed when he has made these things understood. The task of the philosopher is to judge them. The more enviable task of the man of action is to redress them. But action may come to the aid of philosophy. Our action must be to teach the Germans how to think correctly.

Both the German commanders and the German soldiers must be taught, by appropriate reprisals, that a "law of *landsturm*," intended for a time of desperate defence, can no longer be put into execution when this *landsturm* is merely the vanguard of an army of organised aggression let loose upon the most unoffending of neutral peoples.

The commanders must be taught that humanity is not the appanage of the chiefs of the German army when in a generous mood. And we must destroy the sophism which establishes a subtle

antimony between *civilisation* and *humanity*, civilisation being the lot of the inferior and invaded peoples, and humanity the privilege of the invaders—free, according to their feudal whims, to generalise atrocity or particularise clemency. If civilisation is, morally, an equilibrium of rights and duties; if it is, socially, a complex harmony of concerted liberties, then the present war will be morally and socially a civilising war. It will have attained its object only when it has assured this moral and social equilibrium of foundations too firm to be shattered ever again, by any arbitrary will, and when there are no more German generals who will speak of “the utter hollowness of a civilising war.”<sup>1</sup>

We know the immensity of German pride. Many years ago an expert and impartial witness, the Swiss Colonel Wilhelm Rüstow, drew a true and striking comparison. He remembered that the Roman Republic, in the days of its austere simplicity, used to treat its enemies with severity, but according to an equitable law. The Empire of the megalomaniac Cæsars imputed their loyal resistance to invaded peoples as a crime, and treated them in advance as rebels.

“To-day,” says Rüstow, “the Germans are

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<sup>1</sup> Julius von Hartmann, *op. cit.*, Vol. XIII., p. 123.

strongly inclined to hold similar opinions; and to bolster up these opinions they imagine a 'law of nations' *ad hoc*. According to them, not only must the vanquished people be subdued by force; they insist that it shall recognise as justice the force to which it succumbs—that the conquered people shall recognise that it is legally punishable for the resistance which it has offered."<sup>1</sup>

At an interval of forty years these words express a claim that has known no modification. We see it in the sinister sophistry of pride in virtue of which the German army professes to "chastise Belgium," and burns towns and villages after every failure which it has to avenge. We will venture to say that the present war will, once for all, put an end to these oppressive sophistries.

This war, which we intend to fight to a finish with honest justice, will not meet with the approval of the German intellectuals because of its justice. They will approve of it only if it be victorious. These intellectuals have the cult of success. In fifty years their mental state has undergone no change. A highly religious historian, Watthe, could bring himself to write, in 1867: "Historic right is based

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<sup>1</sup> W. Rüstow. *Kriegspolitik und Kriegsgebrauch*, 1876, p. 214.



on force." A Hegelian of the same period went further: "The issue of war is always just—it is a true judgment of God."<sup>1</sup> We do not think so, even when we are victorious. We know the fragility of civilisation; we know how many causes have been lost in war whose eternal historic justice must be admitted. The cause we are defending would always have been our cause, even had it been lost. But we shall not again forget to serve its justice by forces which will render it impregnable, even against the strongest.

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<sup>1</sup> Lasson. *Das Kulturideal und der Krieg*, 1868. This philosopher had almost fallen into oblivion after a meritorious career when he became, as an octogenarian, celebrated on account of his two well-known letters on the incomparable superiority of the Germans. I believe they are authentic. They have the courage to say in naïve terms what three-quarters of the German intellectuals believe in their hearts.



PART II  
DOCUMENTARY EVIDENCE



## CHAPTER IV

### THE DOCTRINE OF CLAUSEWITZ

GENERAL KARL VON CLAUSEWITZ (1780-1831) is the chief of German military writers. From 1801, when he entered the Military College of Berlin, he was profoundly influenced by Scharnhorst, whose best pupil he was. He took part in the Battle of Auerstädt in 1806, and he published his observations on the Prussian campaign in a work which was written in 1825, but which was for a long time kept secret: *Nachrichten über Preussen in seiner grossen Katastrophe*—"Concerning Prussia and her great Catastrophe." He fought in the ranks of the Russian army at Witebsk, Smolensk, and Borodino, in 1812. Regarded with disfavour by the King of Prussia, for having entered the Russian service, he nevertheless had the satisfaction of charging the French at the head of the Prussian cavalry at Grossgörschen and at Bautzen in 1813. In 1814 he re-entered the Prussian service with the rank of colonel. He was Thielmann's Chief of Staff at

Ligny, Wavre, and before the Battle of Sedan. In 1818, he was appointed to the *Allgemeine Kriegsschule* in Berlin. His most famous work, *Vom Kriege*, written between 1812 and 1816, condenses his experience and his teachings. It was first published in 1832. It occupies the first three volumes of his posthumous works (*Hinterlassene Werke*, 1832). General Albrecht von Schlieffen, lately Chief of the German Great General Staff, has said of Clausewitz : “ His doctrine is, in substance and in form, the finest thing that has ever been said concerning war. . . . Of this doctrine many principles have passed into our regulations. Whoever, in Germany, teaches concerning war, must borrow, even to-day, more or less extensively from Clausewitz, must draw upon this inexhaustible well-spring of thought.” (Preface to the fifth edition of *Vom Kriege*, 1905, p. iv.). Field-Marshal von Moltke admits that Clausewitz exercised a predominant influence over him. So we may assert that the doctrine of Clausewitz is the origin of the military tradition of the modern German authorities.<sup>1</sup>

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<sup>1</sup> Concerning Clausewitz, the reader may be referred to the following well-known works : K. Schwartz. *Leben des Generals Karl von Clausewitz*, 2 vols., 1878.—Colonel Camon. *Clausewitz*. Paris, 1911.—P. Roques. *Le Général de Clausewitz, sa vie et sa théorie de la guerre*. Paris, 1912.

(I) *The theory of absolute war*

“ War is an act of violence whose object is to constrain the enemy to accomplish our will. Violence provides itself with arms, by aid of the inventions of the arts and sciences, in order that it may oppose violence. Insignificant limitations, hardly worthy of mention, which it *imposes on itself*, under the name of the law of nations, accompany this violence without notably enfeebling it. Violence, therefore, is the *means*. The *aim* is to impose our will on the enemy. To achieve this aim we must disarm the enemy. . . .

“ Philanthropic minds may imagine that there is an art of disarming or defeating the enemy without causing very many wounds, and that this is the real tendency of the art of war. This sounds well in words, but it is an error that must be destroyed. In realities as dangerous as war the errors which arise from goodness of heart are the worst of all. . . . He who makes use of unmitigated force, without sparing bloodshed, will necessarily win the upper hand if his adversary neglects to do the same.

“ If the wars of civilised peoples are much less cruel and destructive than those of uncultivated peoples, this is because of the internal social condition of States, and the social relations of States

among themselves. War results from this condition and these relations; and by them it is conditioned, restrained, and moderated. But these things do not form part of war; they are simply the data of war. One cannot, without absurdity, introduce a principle of moderation into the philosophy of war. . . .

“If civilised peoples do not put their prisoners to death, do not destroy towns and devastate provinces, it is because more intelligence enters into their method of making war; and this intelligence has taught them more efficacious means of employing violence than the brutal manifestations of instinct.

“But so long as I have not defeated the enemy I am forced to fear that he may defeat me. I am not the master. This is a law which he imposes on me as I on him. There is here a reciprocity of action which of itself pushes war towards the absolute.”<sup>1</sup>

(2) *The tendency of modern warfare has been to approximate more closely to “absolute war”*

“In 1793 a military force appeared of which no one had had any conception. War, in France (as in

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<sup>1</sup> *Vom Kriege*, 1867, Vol. I., pp. 4-7.



the days of the Tartars), had once more become the concern of the people, and of a people of 30,000,000 souls, all of whom regarded themselves as citizens. . . . From that time the means which it was possible to employ, and the efforts put forth, had no longer any determined limits. The energy with which war could be conducted had no longer any counterpoise; consequently the peril to the adversary was extreme.

“At the outset there were technical imperfections, and against these the French had to struggle; they displayed themselves first in the ranks, then in the generals, and at last, in the days of the Directory, in the Government itself.

“When the whole was perfected by the hands of Bonaparte, this military power, based upon the whole strength of the people, advanced across Europe with such a certainty of methodical destruction that there was not for a moment any doubt as to the result, so long as it was opposed only by a military force of the old school.

“In course of time came the reaction. . . . Germany and Russia, in 1813 and 1814, put into the field against France a million men. . . . This is why the energy of warfare was something quite different . . . and the conduct of operations was not in the old style, but in the new. . . .

“Since the days of Bonaparte war, which first in one camp, then in another, became an affair of the people, has assumed a totally different character; or rather it has approximated to its real character, to absolute perfection. . . . The energy with which the operations of war were conducted was infinitely increased by the extent of the means employed and the degree of success possible, and also by the violent excitation of feeling. The object of military action was to crush the enemy. And only when he was prostrate, reduced to impotence, did it seem possible to call a halt and to consider the ends in view. . . .

“Will it always be so? That is difficult to determine. . . . But it will be granted that limits which operated because men did not realise the possibilities of the case are difficult to re-establish once they are exceeded; and whenever great interests are at stake, mutual animosity will express itself with the violence of which we have in our time been witnesses.”<sup>1</sup>

(3) *The means of exhausting the enemy's forces*

“The strength of the enemy decreases as his military forces are consumed. These, therefore, we

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<sup>1</sup> *Ibid.*, III., 90-93.

must destroy. It also decreases when he loses provinces. These, then, we must conquer. In addition to these two objects, there are two further methods which tend to increase the expenditure of the enemy's strength. *The first is the invasion, that is the occupation, of enemy provinces, not with the intention of retaining them, but in order to raise from them war contributions, or even to devastate them.* Here the immediate object is not to conquer the country, not to annihilate the fighting force of the enemy, but *more generally to cause injury to the enemy.*

“The second method is to direct our operations against objects whose destruction increases the injury suffered by the enemy.”<sup>1</sup>

(4) *The right of requisition has no limits except in the utter impoverishment of the invaded country.*

“The system of methodical requisitions is incontestably the simplest and most efficacious means of providing armies with the means of support. It has served as a basis in all modern wars. It necessitates the collaboration of the local authorities. It consists, not in seizing supplies by force, but in

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<sup>1</sup> *Ibid.*, I., 31.

causing them to be furnished in an orderly manner according to a national scheme of distribution.

“ The executive power of certain military detachments which follow the officials entrusted with this service ensures the actual delivery of the supplies requisitioned. What ensures them even more certainly is the fear of responsibility of punishment and ill-usage, which in such cases usually weighs as a general oppressive on the whole population. . . .

“ This method has no limits other than the exhaustion, impoverishment, and devastation of the country. . . .

“ It is doubtful whether this system will be replaced. No other system gives results in any way comparable in energy of action or facility and ease of operation.”<sup>1</sup>

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<sup>1</sup> *Ibid.*, II., 86, 87.

## CHAPTER V

### THE DOCTRINE OF GENERAL VON HARTMANN

GENERAL JULIUS VON HARTMANN was born at Hanover in 1817; he died in 1878. He began his career as an ensign (*Fähnrich*) in the 10th Prussian Hussars; took part in the suppression of the Revolution of 1849 in Baden; and in 1852 was attached to the staff of the Third Army Corps. In 1853 he entered the Great General Staff of Berlin with the rank of major. He took an extremely active part in preparing plans for the reorganisation of the Prussian Army after the defective mobilisation of 1859. He was Government Commissary during the debates in the Prussian Landtag on the subject of this reorganisation (1860). He was one of that enlightened military minority which defended the principle of two years' service. He therefore withdrew from the Staff when Roon and the "Three Years' Law" were triumphant. In 1865 he commanded the fortress of Coblenz-Ehrenbreitstein. The war of 1866 found him a brigadier-general commanding a division of reserve cavalry of the

Second Army. He pursued the Austrians on the line of the March, and the battles of Tobitscher and Kokeinitz were directed by him. General of division in 1867, he was the Prussian military plenipotentiary who supervised, at Munich, the reorganisation of the Bavarian Army. He inspected the Baden cavalry in the spring of 1870, and this fact left Paris in no doubt as to the solidity of the military conventions binding Prussia to the States of South Germany. During the war of 1870-71 von Hartmann commanded the 1st Division of cavalry, which played only a minor part at Colombey-Nouilly, at Gravelotte, and before Metz. Its initiative was greater at Beaune-la-Rolande, and in the battles of Vendôme and Coulommiers. An army detachment entrusted to von Hartmann on January 7th, 1871, fought only at Villechaux and Château-Renauld. General Julius von Hartmann was the first German governor of Strasburg.

He was a distinguished cavalryman, and a skilful officer. Owing to his long career on the Staff, we may be sure that his writings on military theory and military law very precisely reflect the doctrine of the Prussian General Staff of his period.<sup>1</sup>

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<sup>1</sup> For the life of Julius von Hartmann, see the obituary published by the *Militär-Wochenblatt* of November 30th,

(1) *Military operations cannot be hampered by conditions of humanity*

“To seek to restrain the operations of war in the application of the means of war results in an enfeeblement of the concerted action of the belligerent. The relations of the conflicting forces would thereby be modified from without. At the best, the attainment of the object of war referred to would be delayed ; it might possibly be prevented. But this object of war is inseparably connected with a return to a state of peace. International law must therefore beware lest, in imposing fetters upon warlike action, it should cripple the energetic realisation of that very point of view which in modern war has become the only correct one ; for war is not an object in itself ; it is in all its procedures justifiable only as the means of exchanging as quickly as possible indefensible conditions for

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1878, and the article by Heinrich von Sybel in the *Allgemeine Deutsche Biographie*, Vol. X.

The succeeding extracts are quoted from two very well-known articles published by General von Hartmann under the title: *Militärische Notwendigkeit und Humanität*—“Military Necessities and Humanity”—in the *Deutsche Rundschau*, Vols. XIII. and XIV. (1877-78).

secure and durable conditions. Dr. Lieber<sup>1</sup> says :  
 'The unmitigated conduct of war is to the good of  
 humanity. Violently fought wars run a brief  
 course.'"<sup>2</sup>

(2) *Success can be obtained only by reducing the  
 enemy to a state of want*

"The need and misery of the enemy are indis-  
 pensable conditions of bending and breaking his will.  
 In their efficacy in this respect resides their unde-  
 niable justification, from the moment they are the  
 conditions of furthering the pursuit of a definite  
 and particular warlike object ; they appear as the  
 results of a censurable barbarity only when they  
 are evoked without such an aim, or when they are  
 out of all proportion to the object pursued. An  
 apparent hardness and severity become the very  
 reverse of those qualities when they result in causing  
 a resolve on the part of the enemy to demand peace ;  
 mildness and forbearance are cruel in their effect  
 when they lose sight of the object of war and retard  
 the conclusion of war."<sup>3</sup>

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<sup>1</sup> Lieber is the American jurist who formulated the usages of war observed by the Northern States in the War of Secession.

<sup>2</sup> Von Hartmann, *op. cit.*, XIII., 119. See Chap. VI.

<sup>3</sup> *Ibid.*, Vol. XIII., pp. 123-4.



(3) *The violent passions have their place in war*

“The warrior has need of passion. It must not, indeed, as the result of opposition, be regarded as a necessary evil; nor condemned as a regrettable consequence of physical contact; nor must we seek to restrain and curb it as a savage and brutal force; for in causing a powerful and exclusive concentration of individual energies it becomes an indispensable agent of the consummation of conflict. Every warlike exploit is before all things of a personal nature; it puts before all else the affirmation of the individual character, and it demands, in its agent, a release from the oppressive rule of the moderating laws of everyday life. . . . *Violence and passion* are the two levers essential to any warlike action, and, we say it advisedly, of all *military greatness.*”<sup>1</sup>

(4) *There can be no such thing as “civilised warfare”*

“When peace gives place to war, then violence and passion enter upon the great stage of history, pushing aside the artificial structures of peace, its traditional and hereditary rights, its equilibrium, and its stereotyped activities, and make themselves the imperious masters. War as contrasted with

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<sup>1</sup> *Ibid.*, Vol. XIII., p. 122.

peace is something completely *abnormal*; it produces exceptional conditions in the fullest meaning of the term, is itself indeed an exceptional condition, because it denies, by its very nature, the principles on which civilisation and culture are based, and the laws which preside over their development, setting up in their place a state of affairs which legitimises force and individual power. If by civilisation we understand the equilibrium between rights and duties which forms the basis of the social economy of nations and guarantees institutions, then the term ‘civilised warfare’ as used by Bluntschli seems barely intelligible. It is precisely this equilibrium that is shattered by war. We can speak of war between civilised peoples, but the expression ‘civilised warfare’ bears within itself an inevitable contradiction. Wars can be fought humanely, but they cannot be fought in a civilised manner.”<sup>1</sup>

(5) *The phrase “civilised warfare” is meaningless*

“Whosoever has crossed a great battlefield and has shuddered in the depths of his soul at all the horrors confronting him will have found new strength and exaltation in the thought that here the whole tragic gravity of military necessity is regnant, and

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<sup>1</sup> *Ibid.*, Vol. XIII., pp. 122-3.

here a justifiable passion has done its work. He will welcome the bearers of the Red Cross as the messengers of humanity . . . but the idea will never occur to him that the act of a 'civilised war' has been accomplished before his eyes. The complete hollowness of this idea, according to which the unfettered act of passion, unloosed in its terrible necessity, could be measured according to rule, will seem literally inhuman and painful and repugnant." <sup>1</sup>

(6) *Belligerent military authority brooks no restriction of its liberty of action*

"Rights to be respected by military authority can exist *only in so far as that authority of its own accord expressly concedes them or agrees to recognise or maintain them.* War interrupts in an explosive manner, so to speak, the state of legality proper to peace, and suspends, in respect of its own action, all the concerted juridical norms (*Rechtsnormen*) which peace would assign to it. If military authority recognises duties it is because it imposes them upon itself in full sovereignty. It will never consider itself subject to outside compulsion." <sup>2</sup>

*"Absolute liberty of military action in time of war"*

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<sup>1</sup> *Ibid.*, XIV., 84.

<sup>2</sup> *Ibid.*, XIII., 124.

*is an indispensable condition of military success.* Such is the principle with which the exclusively military point of view must oppose all endeavours to fetter action by an international military law. . . . It is a gratuitous illusion to suppose that modern war does not demand far more brutality, far more violence, and an action far more general than was formerly the case. . . . Modern war employs means too colossal, both as regards men and the material of war, it subjects the national welfare to too great a strain, it disposes in too absolute a fashion of all the resources of the State, not to demand, imperiously, as an inevitable result, the unrestricted employment of all the forces of war which it brings into the field. The real power of war is so sovereign that the laws which it prescribes for itself have no need to seek their justification in any other sphere. The conditions which give rise to military measures are almost absolutely opposed to those which determine legality in time of peace. If we consider the terrors which war brings in its train, we shall declare war only in fear and trembling. But once the resolution has been taken the consequences must be pursued with absolute lucidity and without timidity. These consequences, obviously, are terrible: this is why it is to be hoped that men will seek, by all the means at the disposal of a general

and respected international law, to avoid war, the cruellest scourge of the nations ; but once war is declared only the demands of military necessity have the force of law.”<sup>1</sup>

(7) *All treaties which are contrary to liberty of military action are void in time of war*

“ States may observe, in their armies, this or that usage of war, of their own accord, or they may expressly recognise the validity of this or that general practice ; they may conclude international treaties which guarantee certain measures intended to limit the arbitrary character of military power, or to bring it into agreement with the usual customs of warfare ; they may, finally, go so far as to proclaim a code of war which prescribes, to the military power, certain firm and fixed rules of humanity. But the same States must not be guided in such matters by the general principles of law ; they must eliminate from their stipulations all that might in any way hamper or compromise the liberty and continuity of military action ; so that here again they are absolutely dependent on the particular concrete circumstances which are entailed by war ; that is to say, on military necessity.”<sup>2</sup>

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<sup>1</sup> *Ibid.*, XIV., 89-90.

<sup>2</sup> *Ibid.*, XIII., 471.

(8) *The efforts of the jurists are Utopian*

"If the doctrine and the laws of peace would continue their universal task of civilisation in the domain of war, they must first of all learn to restrain themselves. The Utopian idea of a war constructed *a priori* must be abandoned. War must be accepted as it is and always will be, as a *struggle*. Tradition and usage may have succeeded in imposing, upon its action, forms which tend to regularise it. But these forms can only make themselves felt on the condition of being always liable to modification; this is a characteristic which they must always retain. If we wish to codify them anew it is essential to keep this fact in sight. The maxims of experienced lawyers and the solutions based upon precedent can scarcely acquire an authoritative value as a law of warfare, because war is not developed according to a specific and definite law; and because the circumstances of war are of themselves and by their nature, of a constantly variable kind; finally, because they are the object of a subjective appreciation, which, when a decision must be taken, can recognise no other law than that of *military necessity*." <sup>1</sup>

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<sup>1</sup> *Ibid.*, XIV., 90-91.

(9) *The enemy nation must be attacked in all its personal and material resources*

“The more we regard the nation as a whole as constituting the belligerent party, and the more it is actually called upon to take part in the war, the more comprehensive, rich and various are its military resources. The nation, as an organic and articulate formation, is born, by historic development, of the mutual relations of the people and the country. It is not the numerical population, isolated and divorced from the surface of its native soil, which constitutes the essence of the modern State. A State represents rather the result of a continuous accomplishment, by means of which the people, intellectually and materially, has become the usufructuary and master of the particular locality which has been granted to it. But just as the people and their country mutually influence and condition one another, so the nation’s *personal and material resources of war* mutually determine and complete one another as its means of warlike activity. . . . The development of the national military power depends on these two sorts of resources, as it is vulnerable in both.”<sup>1</sup>

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<sup>1</sup> *Ibid.*, XIII., 450-51.

(10) *Requisitions are designed to cause the complete impoverishment of the enemy, without distinguishing between public and private property*

“The enemy State must not be spared the want and wretchedness of war; these are particularly useful in shattering its energy and subduing its will. . . . The burden will and must be crushing, until it ceases on the principle *ultra posse nemo obligatur* (no one can perform the impossible); but the necessity of imposing this burden results from the conception of national war; the belligerent State must economise its own means of war, but must damage and annihilate those of the enemy.”<sup>1</sup>

“The system of requisitions goes far beyond collecting the means of subsistence in the country in which war is being waged. It implies the total exploitation of the country, in all possible ways, according to the needs of the operating army, whether it is a question of facilitating its advance or of prolonging its action or of guaranteeing its local security. . . . The claim is thus advanced, that military necessity can establish no distinction between public and private property; that it has a right to take what it needs, wherever and however it can.”<sup>2</sup>

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<sup>1</sup> *Ibid.*, XIII., 459.

<sup>2</sup> *Ibid.*, XIII., 458.



(11) *Terrorism is the law in modern warfare*

“Individual persons may be harshly dealt with when an example is made of them, intended to serve as a warning. They are, it is true, very greatly to be pitied. At the same time the severity with which they are treated is salutary and a benefit to the collectivity. Whenever a national war breaks out terrorism becomes a necessary military principle.”<sup>1</sup>

(12) *The rights of humanity during the war*

“The concepts of war and of humanity are not mutually exclusive. It is always for ideal objects that passion and violence are loosed in war. While passion seizes upon the isolated representatives of warfare, stimulating their energies and their strength of will to the highest degree, it does not lose contact with the ethical state of civilisation in whose midst they have grown up and to whose realisation they contributed in time of peace. Passion, owing to the state of violent excitement which it produces in combatants, bestows a more rapid pulsation upon all that civilisation and ethics have created in the heart of the individual.”<sup>2</sup>

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<sup>1</sup> *Ibid.*, XIII., 462.

<sup>2</sup> *Ibid.*, XIV., 71.

“ The carnage of battles, the misery of the ravage and devastation which follow in the train of war and all its terrors, are only comprehensible and admissible to human thought and experience if they are regarded as the effects of the *most passionate* violence. But theories and doctrines are powerless to master and subdue unfettered passion. Here the manners and the education which govern the whole personality and unconsciously impregnate it are the only effectual motives of humane and moderate conduct.”<sup>1</sup>

(13) *Certain abuses of personal violence only may be repressed*

“ International law will of course endeavour by its teaching to limit the terrors and the severities of war, while military authority in its own sphere seeks to render its instrument of war more keen and powerful, so that its blows may be the more deeply felt. But, however paradoxical it may seem, the two tendencies fulfil themselves by the same means, and military realism may here with full confidence take the hand of juridical idealism. It is only necessary that the former should lay stress on the following condition: military law must recognise

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<sup>1</sup> *Ibid.*, XIV., 72.

the wide distinction between military action and the individual conduct of soldiers. On the subject of such conduct only can there be any understanding. In all matters of military action, on the contrary, military realism absolutely demands, in its own interest, precedence before all the requirements which an international law scientifically constituted might seek to impose.”<sup>1</sup>

“Acts of brutality committed upon unarmed persons, pillage, and the gathering of booty, are regarded as crimes, because we see in them the abuse of a *personal and self-seeking violence and a selfish interest*; but the fact of burning and razing a particular locality, with all the goods of its inhabitants, because it limits the field of fire of a battery in position, is a measure taken on behalf of a particular strategic object, which bears in itself its full justification.”<sup>2</sup>

(14) *Military necessity comes before humanity*

“Military necessity and humanity must be weighed one against the other; now one will prevail, now the other. It comes to this, that both must find scope; must provide themselves with means of action which, with a full comprehension of the

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<sup>1</sup> *Ibid.*, XIII., 118,

<sup>2</sup> *Ibid.*, XIV., 74.

military situation and all that it demands, will allow them simultaneous satisfaction. In case of conflict the necessity of attaining a military end must always be the deciding motive." <sup>1</sup>

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<sup>1</sup> *Ibid.*, XIV., 76-7.

## CHAPTER VI

### THE DOCTRINE OF FIELD-MARSHAL VON MOLTKE

THE Prussian major, Helmuth von Moltke, in a little work on *Germany and Palestine*, which he published, in 1841, on returning from a mission to Turkey, made the following declaration: "We openly give our support to the idea, often derided, of a general and perpetual European peace."<sup>1</sup> But it did not seem to him that the time for such a peace had yet arrived. "It is still possible for a very small number of powers to cause at will a universal conflagration." But, the young officer added: "Wars will become more and more rare on account of the excessive expense which they will henceforth entail."

Moltke the field-marshal had lost faith in the ideal to which he "openly gave his support" in the forties. His ideas were different; they were also more confused. He wrote to Karl-Friedrich-

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<sup>1</sup> Moltke. *Gesammelte Schriften und Denkwürdigkeiten*, Vol. II., p. 287.

August Hauschild, who had submitted a proposal of the simultaneous disarmament of the nations, that to his thinking "every war, even if victorious, is a national misfortune." (March, 1879.) But to Professor Bluntschli of Heidelberg, who in 1880 submitted to him the manual prepared by the Institute of International Law, entitled, *The Laws of Warfare on Land (Les Lois de la guerre sur terre)*, he replied: "Perpetual peace is a dream, and it is not even a beautiful dream. . . . In war the nob<sup>l</sup> est virtues of man come into play." We cannot see how it can be a "national misfortune" to renounce an unbeautiful dream. Of course, according to Moltke's logic, a prolonged peace during which "humanity would wallow in materialism" would be a still worse disaster. We will reproduce *in extenso* the passages in which the field-marshal expresses his ideas upon war and the degree of humanity which it will tolerate.

(1) *Moltke shares the opinions of Julius von Hartmann*

General Julius von Hartmann sent von Moltke his essay on *Military Necessities and Humanity*. The field-marshal replied by the following letter:

"Berlin, February 18th, 1878.

"I am very greatly obliged to your Excellency

for the attention which you have paid me in sending me your latest work. I have read it with the greatest interest.

“Whosoever is acquainted with war will be of your opinion, that one cannot impose theoretical limits upon war. We can only expect a diminution of its horrors from a severe discipline and the general progress of civilisation. Discipline will make use of constraint and the progress of civilisation will increase the humanity of the individual.

“Your thorough and penetrating fashion of dealing with this subject will help to refute the criticisms directed against our methods of warfare in 1870-71, although these can be reproached neither with pillage intended to enrich marshals, such as was seen in former campaigns, nor with the atrocities of the present Eastern conflict.

“I am,

“Your Excellency, etc.,

“COUNT MOLTKE.”<sup>1</sup>

This letter shows that the German authorities have always refused to accept a definite codification of military law. A delicate allusion is made to the pillage which, it is hinted, enriched the marshals of

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<sup>1</sup> Moltke. *Gesammelte Schriften*, Vol. V., 191.

the first Empire. We have already seen how the Coalition of 1814 treated Champagne; and how the German Army of 1870 had rolling-stock intended to carry to the rear the product of its looting. We may add that the expenses of the war of 1870-71, as regards the German Army, amounted to £60,000,000. France had to pay £200,000,000 as a war indemnity and £40,000,000 interest on arrears. This difference of £180,000,000 was booty, which Prussia and her allies divided, precisely as the Norman pirates of the time of Rollo used to divide their booty. Out of this booty donations were made to Prussian generals, including Field-Marshal von Moltke; and it was to this collective pillage that he owed the estate of Creisau.

(2) *Moltke holds that war can be ended only by the better religious and ethical education of the people*

In 1879 Karl-Friedrich-August Hauschild, a philanthropist of Herbergen, near Liebstadt (in Saxony), proposed to von Moltke a scheme of European disarmament. He begged him to try persuasion on Wilhelm I. Moltke replied:

“ Berlin [*March*, 1879].

“ SIR,—Who can fail to share your heartfelt desire to see a diminution of the heavy military



expenditure which Germany, by reason of her position in the midst of the most powerful neighbours, is obliged to bear? It is not the princes and governors who prevent the accomplishment of this desire. But an improvement of the present condition of affairs can only be effected when the peoples come to recognise that any war, even a victorious war, is a national misfortune. To produce this conviction not even the power of our Emperor is sufficient. This state of mind could only result from a better religious and ethical education of the peoples, which will be the outcome of the historical evolution of many centuries, which neither you nor I will ever see.

“ Be pleased to accept my cordial greetings.

“COUNT MOLTKE.”

(3) *Moltke sees in perpetual peace “ a dream devoid of beauty,” and will not support a codification of the laws of warfare*

The juriconsult Bluntschli, by origin a Swiss, but a professor at Heidelberg University, prepared a manual entitled *The Laws of Warfare on Land*, in the name of a Commission appointed by the Institute of International Law. He kept in mind the ideas expressed by the International Conference of

Brussels, at which Germany was officially represented. Bluntschli endeavoured to conciliate military necessities with the most obvious needs of the civil population. The result was a work which was intelligible to the common soldier, while it was correct from the standpoint of juridical principles. He sent this manual to von Moltke, who replied by the following letter :

“ Berlin, *December 11th*, 1880.

“ HERR PRIVY COUNCILLOR,—You have been so good as to send me the Manual published by the Institute of International Law, and you would like to receive my approval.

“ I can perfectly appreciate the humanitarian efforts which propose to diminish the sufferings caused by war.

“ *Perpetual peace is a dream, and it is not even a beautiful dream* : war forms part of the universal order instituted by God. In war are displayed the most noble of human virtues, courage and abnegation, fidelity to duty, and the spirit of sacrifice which will hazard life itself. Without war humanity would sink into materialism. I entirely agree with the principle expressed in the preface, namely, that the progress of civilisation should be reflected in the methods of warfare. But I think, further, that

*civilisation alone*, and not a *codified law* of warfare, is able to attain this object.

“ All law presupposes an authority which supervises it and assures its application ; and such a power is found to be lacking when it is a matter of enforcing international conventions. Where, among the Powers, are the third parties who will take up arms because one—or both—of the belligerents have infringed the ‘ laws of warfare ’ ? There is no *terrestrial judge* who can give the casting-vote. We can only hope for such a result from the religious and ethical education of the individual, the self-respect and equity of commanders, who will impose a law upon themselves and make their acts conform thereto as far as the abnormal facts of warfare will permit.

“ Now it cannot be denied that more humane methods of warfare have followed the general softening of manners.

“ Only compare the campaigns of the present day with the barbarity into which the armies relapsed during the Thirty Years’ War.

“ In our days important progress has been made in this direction by the introduction of compulsory military service, which enlists the cultivated classes in the army. No doubt the base and violent elements of armies have not disappeared, but

they do not, as formerly, constitute the entire force.

“ Moreover, Governments have at hand two effectual means of preventing the graver excesses : (1) the severe discipline which is enforced in time of peace and with which the troops are strongly imbued ; (2) the administrative precautions taken to nourish troops on active service.

“ Without these precautions discipline can be maintained only in a relative degree. The soldier who endures suffering, privation, fatigue and peril, cannot content himself with taking what he requires *in proportion to the resources of the country* ; he must take all that is necessary to his existence. We must not ask him to be superhuman.

“ The greatest benefit of war is the rapid termination of war. To this end all means must be employed which are not absolutely *abominable*. I can by no means accept the Declaration of *Saint Petersburg*, which holds that the only procedures legitimate to warfare are those which aim at ‘ enfeebling the hostile *army*.’ No ! It is essential to deal with all the resources of the hostile government, its finances, its railways, its food supplies, even its prestige.

“ It was with such energy, yet with a moderation which has few examples in the past, that we con-

ducted our last war against France. The issue of the campaign was decided at the end of two months ; and it was only when—to the misfortune of the country—a revolutionary Government prolonged the war for yet another six months, that the battles assumed a desperate character.

“ I willingly admit that the Manual, in clear and precise terms, gives a better account of the necessities of war than other and previous essays of the same kind. But it is not enough that Governments should recognise the rules established by the Manual in order to ensure their application. It is a custom of war which has long been universally admitted that one has not the right to fire upon a parlementaire, yet we often saw this custom violated in the last war.

“ A paragraph learned by heart will never convince the soldier that he must regard as a regular enemy (in the terms of Section 2 of Article 43) an unorganised population which spontaneously takes up arms, and owing to which he is never for a moment, by day or by night, certain of his life.

“ There are some demands in the Manual which I regard as impossible of execution—for example, the obligation to identify the dead after a great battle. I should be doubtful as to others, did not

the interpolated words ‘ when circumstances permit—if possible—if it is needful,’ etc., give them an elasticity, but for which the sombre earnestness of reality would shatter the fetters which they impose upon it.

“ In war, when all things must be comprehended individually, no means will be effectual, in my opinion, but the paragraphs addressed to the leaders. Such are the rules which the Manual seeks to impose in the matter of the sick and wounded, doctors, and ambulance material. If these principles, and those relating to prisoners of war, were recognised by all the world, this would be a notable step towards which end the Institute of International Law, with a tenacity highly worthy of praise, are seeking to achieve.

“ Pray accept, with my utmost consideration, the full assurance of my devotion,

“ COUNT MOLTKE.”

We see from these statements that Moltke, like Julius von Hartmann, claims that the command alone should be the judge in all that concerns the observation of the laws of war. Indeed, any other arrangement would be difficult. But Moltke will not accept even the making of rules permitting aggrieved populations any definite remedy against

the Governments to whom the troops who have committed abuses are amenable.

Moreover, if, in pursuance of what will always be its undeniable right, the civil population rises against the invader, Moltke considers that it should be savagely repressed, and refuses to regard a population invaded even in its homes as a "regular enemy." In other words, he claims that men who in defending themselves are fulfilling the most sacred of duties, are to be treated as bandits. Finally, he considers that the "sombre earnestness" of the events of war will always shatter the "fetters" of juridical regulations. Needless to say, the same objections may be raised against the hopes which the field-marshal seems to repose in religious and ethical progress. One can always say that in certain cases of "sombre earnestness" all religious or ethical education and all discipline, will be forgotten in war, and that one must not make "superhuman demands." It is utterly futile to discuss the matter with men so determined to hear nothing as the German generals. Reprisals are required.

(4) *Moltke does not admit that neutral countries may criticise the treatment accorded to prisoners of war*

In 1874 a *Universal Alliance* was formed in London. Its aim was to determine the humanitarian duties

of neutrals in case of war. The General Consul for Germany in London, Herr Alfred von Moltke, begged his namesake to sit on the Patronage Committee of this movement. He accompanied this invitation by a scheme for a diplomatic convention to concern itself with the supervision of prisoners of war by neutrals. Moltke rejected the scheme and the invitation in the following words :

“Creisau, June 2nd, 1874.

“SIR,—I have received your kind enclosure of the 27th ult., and I shall be greatly obliged if you will cordially thank the Baron de Linden and M. Dunant for having sent me the *Proposal to serve as a possible basis*, etc. This I have read with great interest.

“All attempts designed to procure for prisoners of war a supportable fate (it must not be attractive) must be encouraged, and yours will certainly receive the assent of many persons. But will the well-meaning stipulations of such a convention be observed by the two belligerents, in the confusion of the incidents of war? That I think is doubtful.

“There was once before, in 1870, a convention of this kind, to deal with the treatment of the wounded. Nevertheless, those of our doctors who remained by the French wounded were often taken prisoner.



“The ‘proposal’ agrees that an officer who breaks his parole may be punished by death. Yes! if he falls into the hands of those to whom his promise was given. But suppose this does not happen, and his own Government makes him a general ?

“We have, even without international conventions, treated our prisoners in a wholly humane manner (although there were whole armies of them) ; but we should never have consented to place them under the protection of representatives of the neutral powers.

“Many other details of the scheme make me feel particularly doubtful ; and I do not feel that I can, in my position, accept the honour of being numbered among the members of the Committee of Patronage of the *Universal Alliance*.

“Accept, with my high esteem, the assurance of my complete devotion.

“COUNT MOLTKE,  
“Field-Marshal.”

This letter proves once again that in matters of humanity the German authorities will receive lessons from no one ; nor will they be accountable to any, not even to “well-intentioned” neutrals. It is utterly futile to negotiate ; and the visits of the representatives of the Red Cross, tolerated in

1914-15 in order to conciliate European opinion, must not be regarded as constituting a measure of control or protection in respect of the treatment of prisoners. We know now that our prisoners of war are without any protection other than that which it suits an arbitrary enemy to permit.

It will be noticed that Moltke even disputes the utility of the Geneva Convention, on the pretext that errors might have been committed infringing it. He does not hesitate to accuse the French—without proof—of the gravest of these errors. We know that in 1914 French doctors and ambulance men, taken captive in August and September, were released by the German authorities only after months of detention in the concentration camps.

## CHAPTER VII

### THE DOCTRINE OF BISMARCK

WE have already seen what was the organisation of the Prussian *landsturm* in 1813, and that it was to fight "by all possible means" while carefully omitting to wear a uniform. It goes without saying that the French army had to take severe measures against this manner of making war. But it has never failed to recognise the value of the moral fanaticism which aroused the people of Prussia. The *francs-tireurs* of 1870-71, on the other hand, all wore a uniform, often a very conspicuous one. The leaders of their corps always, and the ordinary soldiers very often, carried an authorisation signed by the Government of National Defence. In many cases, as in Paris, on the Loire, and on the Lisaine these "free corps" fought in close connection with the regular armies and under the same generals. The Government of National Defence, confronted with the insufficient organisation of the *garde mobile*, and during the great improvised effort of the general levy, felt compelled to accept the assistance of these

private efforts. Nevertheless, the German command was never willing to recognise the *francs-tireurs* as belligerents. It had them hanged like bandits when they were taken, even when they were captured in line of battle.

Bismarck approved of this method in several conversations, and regretted that it was not applied with sufficient rigour.

On August 25th, 1870, at Bar-le-Duc, Bismarck expressed himself unashamedly :

"They are reporting revolting facts from the front as to the bands of *francs-tireurs* which have been formed. Their uniform is such that they can hardly be recognised as soldiers; and they can easily remove the badges which make them recognisable as belligerents. A fellow of that sort, when a detachment of our cavalry is coming up the road, pretends to be lying in the sun by the edge of the ditch, on the border of the wood. When our fellows have gone by, he fires on them with a rifle which, in the meantime, was hidden in the neighbouring bushes; then he escapes into the woods, and, knowing all the paths, he comes out some distance away, wearing an inoffensive blouse. In my opinion these are not defenders of their territory, but murderers who ought to be hung without ceremony when caught."

These statements are full of inaccuracy. The *francs-tireurs* of the Vosges, who were those referred to, wore a uniform which has remained firmly fixed in the popular memory. There is no reason why a *franc-tireur*, who has been lurking in uniform on the edge of a wood in order to fire, should reappear on the other side of the wood without uniform. If our *francs-tireurs* employed peasants for purposes of information, that is another matter.

On January 25th, 1871, before several high officials of the Chancellory and Counts Bismarck-Bohlen and Hatzfeld, Bismarck related a conversation which he had just held with Jules Favre. The conversation with the French Minister had touched upon the abuses with which each belligerent reproached the other. Bismarck concluded thus :

“ As for the *francs-tireurs* and their misdeeds, Favre wanted to remind me of our free corps of 1813. He claimed that their conduct had been worse. I told him : ‘ I don’t deny it. But you ought to know that the French shot them whenever they could catch them. And they didn’t shoot them all at once ; they executed five at the place where they were caught, then five more at the next halt, and so on, in order to intimidate them.’ ” <sup>1</sup>

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<sup>1</sup> Busch, *Graf Bismarck und seine Leute*, 1879, pp. 52, 549.

The American, General Sheridan, at a dinner given by Bismarck at Reims in September, 1870, put forward the following theory:

"The true strategy consists in showering heavy blows on the enemy, as far as his troops are concerned, and then to cause such suffering to the inhabitants of the country that they will be sick for peace, and will insist on their Government concluding peace. The people invaded must be left nothing but eyes to weep with."<sup>1</sup> Moritz Busch, who reports the anecdote, adds: "This is certainly rather hard-hearted, but it is perhaps worthy of attention."

Bismarck never again lost sight of this American doctrine. Someone at Ferrières, on October 2nd, having remarked that the poor were suffering from the war far more than the rich, he replied with Sheridan's doctrine. He added:

"So much the better. There are more poor than rich. We must keep in mind the aim of the war—that is, an advantageous peace. The more the French have to suffer the more they will long for peace, no matter what conditions we impose. And their treacherous *francs-tireurs*, who go about peaceably with their blouses on and their hands in

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<sup>1</sup> *Ibid.*, p. 118.

their pockets up to the elbow, and then, the moment our soldiers have passed, snatch up their guns, hidden in the ditch by the wayside, and fire on them! . . . It will come to our having to shoot all the male inhabitants. To tell the truth, this would not be more serious than the massacre of a battle in which one kills at two thousand yards' distance, without even seeing the enemy." <sup>1</sup>

This is the famous principle according to which the innocent must pay for the guilty. In battle, one soldier does not know who fired the ball that wounds him. He fires back "into the brown." If he avenges himself it is on an adversary who individually has undoubtedly done him no harm. But at least this adversary had a weapon and was using it. If among the civil population a few excited persons, or men more conscious of their duty, form an ambush to elude the invader, must the whole civil population be treated as enemies? The French army in 1813 shot the men of the *landsturm* taken in arms. There was a meaning in this, according to the law of nations. But if the execution *en masse* of all the "male inhabitants" is no more serious, as Bismarck held, than fighting in pitched

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<sup>1</sup> *Ibid.*, p. 178.

battles, we can imagine that all manner of atrocities would be held permissible.

To Bismarck no methods appeared sufficiently expeditious. What pleased him best in the Bavarian troops was their promptitude in atrocity. At Versailles, on November 22nd, when the Würtembergers were being praised, he put before all else the energy with which the Bavarians had prevented the resistance of civilians by means of preventive executions; and between the caviare and the pheasant paté he held forth as follows:

" Our North Germans go too much by the letter of the orders they've received. When one of these bushwhackers (*Buschklepper*) fires on a Holstein dragoon the dragoon begins by dismounting, runs after the scamp with his heavy sword, and catches him. Then he takes him to his lieutenant, who sets him at liberty, or hands him over to a superior authority, which comes to the same thing, for the superior authority sets him free. The Bavarians know another trick. They know that 'war is war.' They stick to the good old traditions. They don't wait to be shot at from behind: they shoot first." <sup>1</sup>

No one will believe that the German authorities, pedantic as they were in the application of drastic



penalties, posting up, in the smallest villages occupied, the terrible threats of these penalties, ever set at liberty men captured by German soldiers in the flagrant act of armed revolt. But Bismarck would not have the troops too scrupulous in making inquiries; would not have them keep too closely to the letter of the orders received by them. It is better to be more drastic than the orders, and to "shoot first" that is, to massacre, even on a mere suspicion of revolt.

At Bourget the *francs-tireurs* fought side by side with the best French regiments, and among them was the crack corps of the *francs-tireurs* of the Press. Some of these were taken prisoners. Bismarck exploded: "To think that they've again taken *francs-tireurs* prisoners! They should have been shot one after another!"<sup>1</sup>

We should sadly misunderstand Bismarck if we supposed that he felt a grudge against none but *francs-tireurs*, or civilians suspected of being such. Count Holstein, a "negotiator extraordinary" from Bavaria, at Versailles, on November 25th, 1871, related that a shoemaker in Munich had made a huge sum of money by letting windows from which spectators could watch the procession of Algerian

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<sup>1</sup> *Ibid.*, p. 252.

sharpshooters who had been taken prisoners. Bismarck retorted: "It's going against all that was agreed to make these negroes prisoners." Holstein replied: "I believe they are not going to take any more." Then Bismarck: "If they listened to me every soldier who made a prisoner of such a fellow and handed him over to his chiefs would be punished by arrest. They are bandits. They must be slaughtered. Foxes have the excuse of being thieves by nature. But these? They are abominable monsters. They have tortured our soldiers in the most infamous fashion, even to death."<sup>1</sup>

Bismarck, like the tribe of German pamphleteers, tried to pretend that the Algerian Arabs and Kabyles were negroes. Even if they were negroes they were regular soldiers. And if the Algerian troops did commit abuses it was the part of the German Government to call the attention of neutrals and of the French Government to such instances. An official inquiry should have been held, and proof adduced: but there was nothing but allegation unsupported by proofs. When there was a regular inquiry it gave as a rule negative results. Then Bismarck complained: "All the proclamations announcing a state of war are so much paper only. Those who

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<sup>1</sup> *Ibid.*, p. 354.

aren't massacred on the spot or hanged by our soldiers are certain to escape. It is a crime against our own troops." <sup>1</sup>

Then he commanded one of the scribblers in his pay, such as Moritz Busch, to write an article full of envenomed calumnies respecting the French methods of warfare, concluding, in order to justify the German severities: "The present French Government is itself the chief offender. It has unchained the national uprising: and it is now in no condition to curb the passions it has aroused, which are making hay of the law of nations and all the customs of war. It is the Government above all which is responsible for all the severity with which we have been obliged, against our will, and (as is proved by our campaigns in Austria and Schleswig), against our nature and our habits, to apply the law of warfare."

The Republic organised the national uprising in 1870 because this was the only legitimate means of defence which remained to it. There is no "responsibility" here. There is only the fulfilment of a duty. One day the Schleswig hussars were surprised and decimated in a village by *francs-tireurs*. Of course the cavalymen accused the inhabitants of

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<sup>1</sup> *Ibid.*, p. 299, November 14th, 1870.

having given information to the French, and they burned the whole village. Bismarck, according to his faithful Busch, "praised this energy, as it was expedient."<sup>1</sup> The doctrine of Bismarck argues that *francs-tireurs* should be hanged when taken; that civilians should be shot down the moment they are suspected of being *francs-tireurs*; and that all villages suspected of complicity should be burned. Finally, the whole people of the country invaded should be left nothing but "eyes to weep with." It seeks to throw the responsibility for massacres and incendiarism upon the enemy government which dares to prolong its resistance. This is the very doctrine which Germany is preaching to-day, to justify the accusation of the martyrdom of Belgium.

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<sup>1</sup> *Ibid.*, p. 213, October 14th, 1870.

## CHAPTER VIII

### THE DOCTRINE OF THE GERMAN GENERAL STAFF OF TO-DAY

THIS doctrine is contained in the book officially published by the Great General Staff under the title of *Kriegsbrauch im Landkriege*, 1902.

- (I) *The German military authorities do not recognise the international conventions which seek to determine the laws of warfare*<sup>1</sup>

“The argument of war (*Kriegsraison*) allows any belligerent State to employ any means which will facilitate the accomplishment of the aim of war ; still, practice has taught us that it is advisable, in our own interests, to observe a limit in the employment of certain methods of war, and entirely to renounce the employment of other methods. The spirit of chivalry, Christian thought, high civilisation,

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<sup>1</sup> This heading and the following headings in this chapter, do not, it is perhaps needless to say, appear in the original German work.—(B. M.)

and, by no means lastly, the recognition of what is to our own advantage, have led to a voluntary and self-imposed limitation whose necessity is to-day tacitly recognised by all states and armies ; and these, in the course of time, have led, in the mere transmission of knightly usages in the passage of arms, to a series of agreements which are sanctioned by tradition, which we are accustomed to sum up in the words ‘ usage of war ’ (*Kriegsbrauch*), ‘ custom of war ’ (*Kriegssitte*), or ‘ manner of war ’ (*Kriegsmanier*). Such usages of war have always existed, even in ancient times ; they differed according to the state of civilisation of the various nations, their national economy, and other conditions. . . .

“ The fact that such limitations of the unrestricted and regardless employment of all available means of war, and the humanisation of the methods of prosecuting war, are really facts, and are actually observed by the armies of all civilised States, has often led, in the course of the nineteenth century, to attempts to develop, extend and make generally binding these already existing usages of war : to devote them to the status of laws compulsive on all nations and armies : in other words, to make a *codex belli*, a law of warfare. All these attempts have hitherto, with a few exceptions to be mentioned later, completely failed. If, therefore, in the course

of the present work the expression 'the law of war' is employed, it must be realised that by this is meant not a *lex scripta* introduced by means of international treaties, but merely conventions which are dependent only on reciprocity, and limitations of arbitrary conduct, such as usage, custom, humanity, and a calculating egoism have erected, but for whose observance there exists no other sanction than the 'fear of reprisals.' " <sup>1</sup>

(2) *Officers must not be allowed to acquire exaggerated ideas of humanity*

“ . . . Since the almost universal introduction of conscription the people themselves exercise a profound influence on the spirit (in which war is waged). In the modern usages of war we must take into account not merely the traditional inheritance of the ancient military etiquette and the ancient military point of view, but also the deposit of the currents of thought which influence our period. But since the moral tendencies of the nineteenth century were essentially ruled by humanitarian conditions which often degenerated into sentimentality or flabby and enthusiastic dreams, there have not been wanting attempts to develop the usages of war in a sense

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<sup>1</sup> *Kriegsbrauch im Landkriege*, pp. 2-3.

absolutely opposed to the nature and aims of war. There will be no lack of such attempts in the future, the more so as these movements have found a moral recognition in certain provisions of the Geneva Convention and the Brussels and Hague Conferences.

“Moreover, the officer is a child of his age, and is affected by the mental tendencies which affect his nation ; the more highly civilised he is the more will this be true of him. The danger that he may in this way entertain false ideas as to the essential nature of war must not be overlooked. This can only be avoided by a profound study of war itself. By steeping himself in the history of war the officer may guard himself against exaggerated humanitarian ideas, and may come to realise that war necessarily involves a certain harshness, and, moreover, that the only true humanity will often reside in the ruthless employment of such harshness.”<sup>1</sup>

(3) *In war the end justifies the means*

“By the means of warfare we understand all those measures which one State can employ against another in order to attain the object of war—which is, to compel the enemy to submit to its will. They may be summarised under the two conceptions of *Cunning*

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<sup>1</sup> *Ibid.*, p. 3.



and *Violence*, and judgment as to their applicability may be embodied in the statement :

“*Any means of war may be employed, lacking which the object of war would be unattainable. On the other hand, all deeds of violence or destruction which are not demanded by the object of war are reprehensible.*”

“From these universally valid principles it follows that the subjective freedom and arbitrary judgment of the commanding officer are given a very wide scope, and his decisions will be guided by the principles of religion and civilisation, the traditions in force in the army, and the general usages of war.<sup>1</sup>”

“A war waged with energy cannot be directed solely against the combatants of the hostile State, and the positions which they defend, but will and *should* equally endeavour to destroy the collective intellectual and material resources of the enemy. Humanitarian considerations, such as would protect individuals or their property, can only be regarded in so far as the nature and the object of war will allow.”<sup>2</sup>

(4) *The Germans destroy only by necessity*

“The conception of the inviolability of private property . . . was held and observed by the

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<sup>1</sup> *Ibid.*, p. 9.

<sup>2</sup> *Ibid.*, pp. 1-2.

Germans in 1870. . . . In every case the strictest respect for private property was enjoined on the troops by the German military authorities after crossing the frontier. . . . In the same way, the wilful destruction and devastation of buildings and so forth did not take place on the side of the Germans except when it was evoked by the conduct of the inhabitants. Such things hardly ever occurred, save where the inhabitants had foolishly deserted their homes, and the soldiers were excited by locked doors and a lack of food. ‘ If the soldier finds the doors of his quarters locked, and the food deliberately hidden or buried, then necessity drives him to break open the doors and to discover the provisions, and he then, in righteous wrath, will smash a mirror into the bargain, and heat the stove with the broken furniture.’ <sup>1</sup>

“ Minor cases of destruction are in this way explained in the eyes of every sensible and thoughtful person ; and a profound and impartial inquiry has shown that the destruction and devastation on a larger scale of which the German Army has been accused has in no case exceeded the necessities prescribed by the military situation. Thus, the much talked-of, and, by the French, monstrously

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<sup>1</sup> Bluntschli. *Völkerrecht*, see 652.

exaggerated instance of the burning of a dozen houses of Bazeilles, together with the shooting of a few inhabitants, was fully justified and in accordance with the laws of war ; indeed we may claim that the conduct of the population would have called for the complete destruction of the village and the condemnation by martial law of all the adult inhabitants.”<sup>1</sup>

(5) *Previous warning of bombardment is not necessary*

“ War is waged not merely against the enemy combatants, but also against the inanimate military resources of the enemy. These include, in the first place, the fortresses, but also every town and village which may be an impediment to military progress. All may be besieged, bombarded, stormed, and destroyed if the enemy defends them, and in some cases if he only occupies them. . . .

“ We must distinguish between :

“ (a) Fortresses, strong places, and fortified places.

“ (b) Open towns, villages, buildings, and the like, which are occupied or used for military purposes.

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<sup>1</sup> *Kriegsbrauch im Landkriege*, pp. 55-6.

". . . Fortresses and strongholds . . . can be bombarded just like the hostile army itself.

"A previous notification of bombardment is as little to be required as previous notification of sudden assault. The claims which certain professors of international law put forward in this respect are absolutely opposed to the necessities of war, and must be repudiated by soldiers; cases in which a purely voluntary notification has been given are no proof of its obligatory nature. The besieging party must ask himself whether the very absence of notification, the sudden and unexpected nature of the bombardment, does not constitute a prime factor in the effect which he wishes to attain, and whether he will not, by warning the besieged party, be losing valuable time. When none of these eventualities is to be feared, and when the object of the action cannot be jeopardised, a warning will, however, be consistent with the claims of humanity. . . .

"The bombardment will not be confined to the actual fortifications, but will, and should, affect the whole town . . . a restriction of the bombardment to the fortifications is impracticable: it would prejudice the success of the operation, and would quite improperly protect the defenders who are not necessarily stationed in the works.

"But this does not exclude the exemption by the

besieger of certain quarters and buildings of the fortress or town from bombardment, such as churches, schools, libraries, museums, and so forth, so far as possible.

“But it is of course assumed that those buildings which seek such protection will be externally distinguished, and will not be used for defensive purposes. Should this be done every humanitarian consideration must be set aside. The odious utterances of French writers concerning the bombardment of Strasburg Cathedral in 1870 are therefore entirely unjustified, since it was bombarded only after an observatory for artillery officers was stationed in the tower.

“*The only limitation of bombardment recognised by international law, through the Geneva Convention, relates to hospitals and convalescent institutions; otherwise the extension of such limitations is left to the discretion of the besieger.*”<sup>1</sup>

(6) (a) *Treatment of prisoners.* (b) *Cases in which prisoners may be put to death are rare, but there are such*

(a) “The mass of the population of a province or

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<sup>1</sup> *Ibid.*, pp. 19-20. Here we have the characteristic German trick of stating a usage and undermining it by exceptions--which always occur when convenient.—(B.M.)

a district may be treated as prisoners of war if they rise in defence of their country. . . .

“The concentration camps . . . should not be prisons or convict establishments. . . .

“Prisoners of war can be set to perform moderate tasks proper to their position in life. . . . These should not be injurious to health nor in any way dishonourable, nor such as contribute, directly or otherwise, to the military operations carried on against the prisoners’ native country. Work for the State is, according to The Hague regulations, to be remunerated at the rates payable to members of the army of the State. . . . Prisoners remain in possession of their private property with the exception of arms, horses, and documents of a military character. . . .

(b) “*Prisoners of war may be put to death*”

“(1) In the event of their committing crimes or offences punishable by death according to civil or military law.

“(2) In the event of resistance or attempted escape (when weapons may be employed in a manner that may be deadly).

“(3) In case of urgent and overwhelming necessity, as a matter of reprisals, whether against similar measures or against other

irregularities on the part of the hostile command.

“(4) In case of unavoidable necessity, when no other means of safeguard exist and the presence of the prisoners is dangerous to the existence of the captor.

“As regards the permissibility of reprisals, we must note that it is contested upon humanitarian grounds by many teachers of international law. To admit this principle and to extend it to every case would, however, be proof of ‘a misconception of the meaning, the seriousness, and the right of war, a misconception which would proceed from a humane sensibility which is doubtless conceivable, but exaggerated and unjustified. We must not lose sight of the fact that here one must give the first consideration to the necessities of the war and the security of the State and not to protecting the prisoners from molestation.’ (Lüder, *Landkriegsrecht*, p. 73.)

“It is to-day unanimously admitted that only the most extreme necessity, the duty of self-preservation, and the security of the State can justify the killing of prisoners. . . . For the rest, the improved means of transport and the facility of feeding

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<sup>1</sup> *Kriegsbrauch im Landkriege*, pp. 13, 14, 15, 16.

prisoners will henceforth render extremely rare those cases in which it will become necessary to shoot prisoners taken in European wars." <sup>1</sup>

(7) *Inhabitants of enemy territory—their rights and duties*

"To-day the idea is universally accepted that the inhabitants of the enemy's territory are no longer to be regarded, speaking generally, as enemies. . . . Neither in life nor in limb, in honour nor in liberty, may they be injured; every unlawful homicide, every bodily injury, . . . every insult, every attack on family, honour, and morality . . . every act of violence, is as strictly punishable as though committed against the people of one's own country. . . .

"The idea that no inhabitant of occupied territory may be forced to take a direct part in the struggle against his own country is subject to one exception, by the general usages of war . . . the employment of the inhabitants as guides on unfamiliar ground. However sorely it may ruffle the humane feelings to force a man to injure his own country, and

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<sup>1</sup> It follows from this passage that the German authorities would consider themselves justified in putting prisoners to death if "means of transport" were lacking or if the difficulty of feeding prisoners were notably increased.



indirectly to fight its troops, yet no army operating in a hostile country will entirely renounce this expedient.

“A still more drastic measure is to force the inhabitants to furnish information relating to their own army, its strategy, its resources, and its military secrets. . . .

“. . . The summoning of the inhabitants to supply vehicles and to provide labour has also been qualified as unjustifiable. . . . In the case of refusal workers may of course be subjected to penalties. For this reason the action of the German Civil Commissioner, Count Renard, which was so severely condemned by French or Francophile international jurists, was in accordance with the actual laws of warfare. This official, in order to obtain the labour required for the repairs of a bridge, after in vain threatening to inflict severe penalties, finally threatened to shoot some of the workers in case of refusal. This measure served its purpose—which was the main thing—without its proving necessary to put it into execution.”<sup>1</sup>

(9) *Hostages may be forced to risk their lives*

“An application of the ‘right of hostages’ was

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<sup>1</sup> *Ibid.*, 98-9.

made by the Germans in 1870-71, to safeguard railways threatened by the population, when prominent citizens of the French towns and villages were forced to ride on the locomotives. This measure, which seriously endangered the lives of peaceful inhabitants, although they had previously been guilty of no offence, was condemned by all writers outside Germany as an infraction of the law of nations and an unjustifiable treatment of the inhabitants of the enemy country.

"To these strictures we must respond that this means, which the Germans themselves recognised as being cruel and severe, was employed only after proclamations and attempts to reason with the people had proved ineffectual, and that in the circumstances it was the only means of making any impression on the undeniably unjust and even criminal behaviour of a fanatical population. Moreover, it was justified not only for this reason, but also by the fact that it was wholly successful, and that wherever prominent citizens were forced to ride on the locomotives, whether it was owing to the greater vigilance of the local authorities or because the people themselves were directly influenced, the security of the traffic was re-established."<sup>1</sup>

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<sup>1</sup> *Ibid.*, pp. 49-50.

(10) *Deceitful guides may be shot*

“A peculiar species of war treason, which must here be briefly examined, as the views of the jurists in this respect dissent emphatically from the usages of war, is the case of deception in guides—the wilful guiding by an inhabitant of the enemy’s troops along a wrong or disadvantageous route. If the guide himself offered his services, then his treason is undeniable ; but even if he was forced to act as a guide, his crime must be regarded as one of treason, for he owed obedience to the occupant of the country, and should in no case have been guilty of an act of open insurrection productive of positive harm. He should, at the very utmost, have confined himself to passive disobedience, holding himself ready to suffer the consequences. (Lüder, *Das Landkriegsrecht*, sect. 103.) However comprehensible the tendency to regard and to judge such crimes from a less severe point of view, the commander of the troops thus injured cannot do otherwise than punish the criminal by death, for the repetition of offences of this nature can be prevented only by rigorous measures of prevention and intimidation.”<sup>1</sup>

[But how decide what to do when the guide has been honestly mistaken ?]

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<sup>1</sup> *Ibid.*, p. 51.

(11) *Contributions of war will be pitilessly imposed if the war is desperately fought*

"The Declaration of Brussels requires that written requisitions shall bear a direct relation to the capacities and resources of the country, and the justice of this limitation would willingly be admitted by everyone in theory, while it will rarely be recognised in practice. In cases of necessity the requirements of the army alone will decide. . . .

"By war levies or contributions is meant the raising of larger or smaller sums of money from the parishes of the occupied province. . . . These contributions derive their origin from the so-called *Brandschatzungen*—ransoms paid to avoid plundering and devastation. They therefore constitute, as compared with the earlier system of pillage, a step in advance as regards the humanising of warfare. As modern international law no longer permits looting and devastation, the principle according to which war is made on States and not on individuals is to-day concentrated. It is therefore logical that those contributions which would have the character of booty or pillage—that is, which would arbitrarily enrich the conqueror—should be inadmissible according to the modern rules of war. Particularly is the conqueror forbidden to recoup himself for the cost

of the war by means of inroads on private property, even if the war was forced on him by the enemy. The only contributions allowed are those which are levied :

“(1) To replace taxes.

“(2) To replace the supplies in kind to be furnished as requisitions by the population.

“(3) As a penalty. . . .

“War contributions were very often employed in the Franco-Prussian War as a means of punishing isolated individuals or whole parishes. When French writers accuse the German Staff of undue severity in this respect, it must be remembered that the desperate character which the war assumed during its later period, and the strenuous part played by the population in that war, necessitated the severest measures.”<sup>1</sup>

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<sup>1</sup> *Ibid.*, p. 63.

## CHAPTER IX

### DECLARATIONS OF GERMAN GENERALS OF TO-DAY

#### (I) *Declarations of General von Hindenburg, Commander of the chief German Army in Poland*

“THE country is suffering. Lodz is starving. This is deplorable, but it ought to be so. One cannot make war in a sentimental fashion. The more pitiless the conduct of the war, the more humane it is in reality, for it will run its course all the sooner. The war, which of all wars is and must be most humane, is that which leads to peace with as little delay as possible.”

These words are quoted from an interview granted by General von Hindenburg to Herr Paul Goldmann, representing the *Neue Freie Presse* of Vienna, and reproduced in full by the *Berliner Tageblatt* of November 20th, 1914.

It follows from these declarations that General von Hindenburg has deliberately caused suffering in Poland, and famine in Lodz, under the pretext of conducting war “more humanely.”<sup>1</sup>

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<sup>1</sup> Another striking example of German sophistry,

(2) *Declaration of General von Dithfurt, in “Der Tag” of Berlin*

“I consider it anything but dignified to endeavour to defend our troops against accusations, whether from abroad or from those at home. Neither we nor our troops are obliged to account to the world for our responsibilities. We have *nothing* to justify, *nothing* to defend, *nothing* to excuse. All that is done by our troops to conquer the enemy, to bring victory to our colours, is justified by its purpose, and must be regarded as justified. We need not trouble ourselves in the least about the approval of foreigners, neutral or otherwise, even though all the historical monuments which stand between our armies and the enemy were to be reduced to dust. We shall have all time to deplore them once peace is restored.

“To-day it is useless to waste a single word on the subject. To-day it is Mars who is the arbiter of our destinies, not Apollo Musagetes. The little mound of earth covering the grave of one of our

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which is always given the lie by facts. German brutality, German ruthlessness, have only made the enemies of Germany fight more resolutely, and will undoubtedly prolong the war. This is obvious to every non-German mind. Zeppelin raids and the shelling of harmless watering-places result only in a huger British Army.—(B.M.)

heroes is more sacred to us than all the cathedrals, all the artistic gems of the whole world ; and if we are called barbarians so much the worse ; we care very little for that ; we laugh at it.

" All the more we ought to ask ourselves whether there are not indications that we ought to deserve this term in a larger measure. Why do we not repay with interest the harm which the enemy has done us ? Let us remember the snares treacherously set for our troops by a fanatical population ; let us remember East Prussia, ravaged by the Russians, and our wounded, horribly mutilated. Why not repay the enemy in his own coin ?

" People have pretended that we are greedy of wars and conquests. It *was* not true. We were not, but we are now, and we shall be, until our glorious final victory. We are called barbarians ! It is false ; we are not—yet. But we may become barbarians, and then we shall be justified in shouting to our enemies : ' You would have it so ! ' Occasions have not been lacking ; they will not be lacking in the future ; it will be enough to profit by them. *We are not savages yet. We have not yet sinned against the law of nations, despite the provocations of our enemies, except when our legitimate defence required it.* Our soldiers do not behave like savages. Such conduct would not be



consistent with our character ; with our high state of civilisation. But no civilisation must make us forget that only the lives of our brothers and our fathers who are fighting have any value for us, and that they mean far more than the fate of dead old buildings. People might spare us these hollow phrases about the Cathedral of Rheims, and all the churches and palaces that are going to share its fate. We will hear no more. Let them talk about Rheims again when our victorious troops re-enter it. We snap our fingers at the rest."

Germany, at the time of The Hague Convention, raised no protest against Article 56 of the Convention, according to which " the intentional injury of historical monuments, works of art, etc., is forbidden and should be made the subject of legal proceedings." To observe her engagements, Germany would have to prosecute not only General von Plettenburg, who ordered the bombardment of Rheims, but also General von Dithfurt, for incitement to deeds which a Convention accepted by the Empire has stigmatised as crimes.

(3) "*Order of the Day*" issued by General Stenger, Commandant of the 58th German Brigade

"From this day forward no more prisoners will be taken. All prisoners will be put to death.

"The wounded, with or without arms, will be put to death.

"Prisoners, even in large constituted units, will be put to death. No living creature must be left behind us."

A French official note has informed us that this order was carried out. Interrogations of German prisoners of this brigade prove that many French wounded were "finished off" with bullets. Even if the order had not been carried out it would still be contrary to The Hague Convention signed by Germany, who made no exception to Article 23, according to which "it is forbidden: (a) to kill or to wound an enemy who, having laid down his arms, . . . has surrendered at discretion; (b) to declare that no quarter shall be given."

(4) *Proclamations of General von Bülow in Belgium*

*Proclamation exhibited at Liège, August 22nd, 1914*

"It is with my consent that the general entrusted with the command has caused the whole neighbourhood<sup>1</sup> to be burned, and that some hundred persons have been executed by shooting.

"The Commander of the 2nd Army,  
"VON BÜLOW."

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<sup>1</sup> Not Liège, but near it.

(b) *Proclamation exhibited at Namur, August 25th,*  
1914

“ Belgian and French soldiers must be surrendered as prisoners of war before 4 o'clock, in front of the prison. Citizens who do not obey will be condemned to penal servitude in perpetuity, in Germany. A strict inspection of the neighbourhood (literally *des immeubles*) will commence at 4 o'clock. All soldiers discovered will immediately be shot.

“ Arms, powder, and dynamite must be given up at 9 o'clock. Penalty: death by shooting.

“ All the streets will be occupied by a German guard, which will take ten hostages in each street. If any disturbance occur in the street, the ten hostages will be shot.

“ The Commander of the 2nd Army,  
“ VON BÜLOW.”

We cannot reproduce the manifestoes of General von Bülow with their original syntax—which is dubious—but the documents are authentic. This murderer and incendiary seems to have no conception of the fact that he is disgracing himself and dishonouring the name of his Emperor, which, without reservation, is attached to Articles 44 and 50 of The Hague Convention. No civil inhabitant of Namur could, according to this Convention, be forced to surrender

French or Belgian soldiers, or to "furnish information" as to the place in which they had taken refuge. "No collective penalty," and above all no summary execution could be pronounced against populations forced to furnish hostages, in case of an individual infraction of a German order which was itself contrary to the law of nations.

(5) *Proclamation of Field-Marshal von der Goltz, exposed throughout the whole of occupied Belgium, on October 5th, 1914*

"On the evening of September 25th, the railway line and the telegraph were destroyed on the Lovenjeul-Vertryck line. In consequence of which the two localities mentioned were forced, on the morning of September 30th, to make themselves accountable and to provide hostages.

"In future, the localities nearest the spot at which such damage is done—whether they are or are not guilty of complicity—will be punished without mercy.

"Field-Marshal and Governor of Belgium,  
"VON DER GOLTZ."

This proclamation—the original of which was written in a Teutonic sort of French and publicly displayed—betrays no suspicion, on the part of its

writer, that it will eternally brand both him and the German Government, for the same reasons that have disgraced General Stenger and General von Bülow. If the armies of the Allies were to capture Stenger, von Bülow, or von der Goltz, the Council of War which would try them would be obliged, in all equity, to punish them for a flagrant violation of the law of nations.

## CHAPTER X

### THE DOCTRINE OF THE FRENCH ARMY

LET us compare, with these German doctrines, the official doctrines of the French Army. It is entirely comprised in The Hague Conventions; that of July 29th, 1899,<sup>1</sup> notified by the French Ministry of War to the heads of the Army on July 16th, 1901, and that of October 18th, 1907, now inserted in a section of the French campaigning regulations. The Ministry of Marine, in 1912, also issued instructions to all the higher officers of the Navy respecting the interpretation of international law in case of war. We here reproduce the essential articles of this international law, which is recognised and applied by the French Army, but only *on condition of reciprocity*.

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<sup>1</sup> Two International Declarations were signed at The Hague on July 29th, 1899: one respecting the prohibition of expanding bullets and one relating to the prohibition of poisonous gases. Both were signed by Germany.—(B. M.)

SECTION I.—CONCERNING BELLIGERENTS

CHAPTER I.—THE NATURE OF BELLIGERENTS

ART. 1.—The laws, rights, and duties of war do not apply merely to the army, but also to the militia and to volunteer corps fulfilling the following conditions :

(1) They must be commanded by a person responsible for his subordinates.

(2) They must bear a distinctive sign, which is recognisable at a distance.

(3) They must carry their arms openly.

(4) They must conform, in their activities, to the laws and usages of war.

In countries in which militia or bodies of volunteers constitute the army or form part of it, they will be included under the denomination of army.

ART. 2.—The population of a non-occupied territory who shall, on the approach of the enemy, spontaneously take up arms to oppose the invading troops, without having had time to constitute themselves conformably with Art. 1, will be regarded as belligerents, provided they bear arms openly and respect the laws and usages of war.

## CHAPTER II.—PRISONERS OF WAR

ART. 4.—Prisoners of war are in the power of the enemy Government, but not of the individuals or the corps which have captured them.

They must be treated humanely.

All their personal possessions, excepting arms, horses, and military documents, remain their property.

ART. 6.—The State may employ prisoners of war as workers, according to their rank and their aptitude, officers being excepted. The work required of them must not be excessive, nor must it in any way relate to the operations of the war.

Work done for the State shall be remunerated according to the rate of pay in force in the case of soldiers of the national army performing similar work, or, if none are so engaged, according to a rate of pay proportionate to the work performed.

The wages of prisoners may help to increase the comfort of their position.

## CHAPTER III.—OF THE SICK AND WOUNDED

ART. 21.—The obligations of the belligerents in respect of the treatment of the sick and wounded are determined by the Geneva Convention.



## SECTION II.—MEANS OF INJURING THE ENEMY

## CHAPTER I

ART. 22.—Belligerents do not enjoy unlimited rights as regards the choice of means of injuring the enemy.

ART. 23.—It is particularly forbidden :

- (a) To employ poison, or poisoned weapons.
- (b) To kill or wound by treachery persons belonging to the hostile army or nation.
- (c) To kill or wound an enemy who, having laid down his arms, or having no means of defence left him, has surrendered at discretion.
- (d) To declare that no quarter shall be given.
- (e) To employ arms, projectiles, or materia calculated to cause unnecessary suffering.
- (f) To make improper use of the flag of truce, of the national flag, or of the military insignia or uniform of the enemy, as well of the distinctive signs of the Geneva Convention.
- (g) To destroy or seize enemy property, unless such destruction or seizure be imperatively demanded by the necessities of war.

It is also forbidden to a belligerent to force the subjects of the hostile party to take part in operations of war directed against their own country. . . .

ART. 25.—It is forbidden to attack or bombard, by any means whatever, towns or villages, dwellings or buildings, which are undefended.

ART. 27.—In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, the arts and sciences, or purposes of charity, as also historical monuments, hospitals, and places where the sick and wounded are collected, provided these are not at the time being used for military purposes. It is the duty of the besieged to denote these buildings or places by special and visible signs which will be notified beforehand to the besiegers.

## CHAPTER II.—SPIES

ART. 30.—A spy taken in the act cannot be punished without previous trial.

## SECTION III.—MILITARY AUTHORITY IN THE TERRITORY OF THE HOSTILE STATE

ART. 43.—The authority of the legal power having *de facto* passed into the hands of the occupant, the latter will take all measures incumbent upon him to restore and ensure, as far as possible, public order and vitality, while respecting, unless absolutely prevented, the laws in force in the country.

ART. 44.—A belligerent is forbidden to compel the population of occupied territory to give information respecting the army of the other belligerent, or his means of defence.

ART. 46.—The honour and rights of the family, the life of individuals, and private property, as well as religious beliefs and the exercise of public worship, must be respected.

Private property must not be confiscated.

ART. 47.—Pillage is expressly forbidden.

ART. 48.—If, in the territory occupied, the occupant collects the taxes, dues and tolls payable to the State, he shall do so, as far as possible, according to the legal basis and assessment in force at the time, and shall in consequence be bound to defray the expenses of administration of the occupied territory in the same measure as the legal Government was so bound.

ART. 49.—If, in addition to the taxes mentioned in the preceding Article, the occupant levies other money contributions in the occupied territory, he shall do so only to supply the needs of the army or the administration of the said territory.

ART. 50.—No collective penalty, pecuniary or otherwise, shall be inflicted upon the population on

account of individual acts, for which it cannot be regarded as collectively responsible.

ART. 52.—Requisitions in kind and services shall not be demanded from the local authorities or the inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country and of such a nature as not to involve the population in any operations of war undertaken against their country. . . .

ART. 56.—The property of local authorities, and that of institutions dedicated to public worship, charity, education, and to the arts and sciences, even when State property, shall be treated as private property.

Any seizure or wilful destruction of such establishments, historical monuments, or works of art and science, is forbidden and should be made the subject of legal proceedings.

This Convention, the reader should note, was signed by Germany with the reservation of Article 44.

## CHAPTER XI

### THE MILITARY LAW OF THE BRITISH ARMY

BEING based upon the various Conventions signed at The Hågue by the representatives of practically all the Civilised Powers, the Military Law observed by the British Army is very similar to the doctrine of the French Army. To quote the official *Manual of Military Law*,<sup>1</sup> the existing written agreements which affect the military forces are :

(i.) The Declaration of St. Petersburg, 1868, renouncing the use, in time of war, of Explosive Projectiles under 400 grammes weight.

(ii.) The two Hague Declarations, 1899 (I.) respecting Expanding Bullets, and (II.) respecting Asphyxiating Gases.

(iii.) The Geneva Convention of 1906 " for

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<sup>1</sup> To be obtained of Wyman & Sons, H.M. Stationery Office (Scottish Branch), E. Ponsonby (Dublin) or the agents of T. Fisher Unwin in the British Colonies, the United States, and generally abroad. Permission of the Controller of H.M. Stationery Office has been obtained for reproducing the extracts contained in this chapter.

the Amelioration of the Condition of the Wounded and Sick in Armies in the Field."

(iv.) The Hague Conventions, 1907 (I.) "Relative to the Opening of Hostilities," (II.), "Concerning the Laws and Customs of War on Land," and (III.), "Respecting the Rights and Duties of Neutral Powers and Persons in War on Land."

(v.) A portion of The Hague Convention, 1907, "Respecting Bombardments by Naval Forces in time of war"; and

(vi.) The Hague Declaration, 1907, "Prohibiting the Discharge of Projectiles and Explosives from Balloons."<sup>1</sup>

Of these agreements it is interesting to note that (i.) was signed by Bavaria, Prussia and the North German Confederation; (ii.), (iii.), (iv.), and (v.) were signed by Germany, with the reservation of only a few articles. Thus the basis of Germany's *Kriegsbrauch* is, from the documentary point of view, much the same as that of the French and English Military Law. The enormous difference

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<sup>1</sup> This Declaration was signed by the Plenipotentiaries of twenty-seven States. France, Germany and Italy were not among these. The Declaration was binding only in case of war "between two or more contracting Powers."

in the spirit of the written text of the German law and its actual execution in the field, is entirely a matter of *exceptions*. The general term of the German law is highly respectable; the exceptions are damnable. The original sources of these exceptions—Clausewitz, von Hartmann, Bismarck—were at least less hypocritical than the superficially respectable *Kriegsbrauch*.

The passages of the British “Manual of Military Law,” which may with advantage be compared with the passages from the French and German doctrines already presented, are contained in the remaining pages of this chapter. It must be remembered that in almost every case Germany has signed the conventions on which these rules are based.

### (1) *Origin of the Laws and Usages of War*

(1) . . . The laws of war are the rules respecting warfare with which, according to International Law, belligerents and neutrals are bound to comply. In antiquity and in the earlier part of the Middle Ages no such rules of warfare existed; the practice of warfare was unsparingly cruel, and the discretion of commanders was legally in no way limited. During the latter part of the Middle Ages, however, the influences of Christianity as well as of Chivalry

made themselves felt, and gradually the practice of warfare became less savage. The present laws of war are the result of a slow and gradual growth. Isolated milder war practices became in the course of time usages, so-called *usus in bello*, manner of warfare, and these usages were developed into legal rules by custom and treaties.

(2) The laws of war consist, therefore, partly of customary rules, which have grown up in practice, and partly of written rules, that is, *rules which have been purposely agreed upon by the Powers in international treaties*. Side by side with these customary and written laws of war there are in existence, and are still growing, usages concerning warfare. While the laws of war are legally binding, usages are not, and the latter can, therefore, for sufficient reasons, be disregarded by belligerents. Usages have, however, a tendency gradually to harden into legal rules of warfare, and the greater part of the present laws of war have grown up in that way.

(3) The development of the laws and usages of war is determined by these principles. There is, firstly, the principle that a belligerent is justified in applying any amount and any kind of force which is necessary for the purpose of war; that is, the complete submission of the enemy at the earliest possible moment with the least possible expenditure



of men and money. There is, secondly, the principle of humanity, which says that all such kinds and degrees of violence as are not necessary for the purpose of war are not permitted to a belligerent. And there is, thirdly, the principle of chivalry, which demands a certain amount of fairness in offence and defence, and a certain mutual respect between the opposing forces.

### (2) *The Opening of Hostilities*

(8) The "Convention Relative to the Opening of Hostilities," 1907, binds the contracting Powers, in the case of war between two or more of them, not to begin hostilities without previous and explicit warning. . . . There is, however, nothing to impose any period of delay between the issue of notification and the beginning of hostilities. Sudden and unexpected declarations of war for the purpose of surprising an unprepared enemy are in nowise rendered impossible.

### (3) *Treatment of Resident Enemy Subjects*

(11) . . . It is, however, a universally recognised rule of International Law that hostilities are restricted to the armed forces of the belligerents, and that the ordinary citizens of contending States, who do not take up arms and who abstain from

hostile acts, must be treated leniently, must not be injured in their lives or liberty, except for due cause or after due trial, and must not as a rule be deprived of their private property.

It is thus no longer considered admissible to detain as prisoners subjects of one of the hostile parties travelling or resident in the other at the time of the outbreak of war . . . but . . . every State undoubtedly possesses the right of taking such steps as it may seem necessary for the control of all persons whose presence or whose conduct appears dangerous to its safety.

(13) This immunity, however, cannot apply to persons known to be active or reserve officers, or reservists, of the hostile army.

#### (4) *The Armed Forces of the Belligerents*

(17) The division of the enemy population into two classes, the armed forces and the peaceful population, has already been mentioned. Both these classes have distinct privileges, duties, and disabilities. It is one of the purposes of war to ensure that an individual must definitely choose to belong to one class or the other, and shall not be permitted to enjoy the privileges of both. In particular, that an individual shall not be allowed to kill or wound members of the army of the opposed

nation, and subsequently, if captured or in danger of life, to pretend to be a peaceful citizen.

(18) The forces of a belligerent have the right to withstand the enemy by all the methods not specially forbidden by the laws of war ; but they may be killed or injured as long as they continue to resist. Once, however, they cease resistance they have a right to humane and honourable treatment as prisoners of war. Their lives are spared, and it is the business of the captor to protect and maintain them.

(20) Under the term armed forces are comprised :

(i.) The army : this includes militia or volunteer corps in countries when they constitute the national forces or form part of them. . . .

(ii.) Militia and volunteer corps which do not ordinarily form part of the army, but have been raised, possibly, for the duration of the war or even for the execution of some special operation. These irregular troops must, however, fulfil all of the following conditions :

(a) Be commanded by a person responsible for his subordinates ;

(b) Have a fixed distinctive sign recognisable at a distance ;

(c) Carry arms openly ; and

(d) Conduct their operations in accordance with the laws and customs of war.

(iii.) The inhabitants of a territory not under occupation <sup>1</sup> who, on the approach of an enemy, spontaneously take up arms to resist the invading troops without having had time to organise themselves as laid down in (i.) or (ii.), provided they conform to conditions laid down above for irregular combatants.

(iii.) *The Conditions required of Irregular Combatants*

(22) The first condition "to be commanded by a person responsible for his subordinates" is completely fulfilled if the commander of the corps is regularly or temporarily commissioned as an officer or is a person of position and authority, or if the members are provided with certificates or badges granted by the Government of the State to show they are officers, N.C.O's., or soldiers, so that there may be no doubt that they are not partisans acting on their own responsibility. State recognition,

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<sup>1</sup> "Invasion is not necessarily occupation." "Territory is considered occupied when actually placed under the authority of the hostile army." In other words, it must be effective. See § 343 of "The Laws and Usages of War."—(B. M.)

however, is not essential, and an organisation may be formed spontaneously and elect its own officers.

(23) The second condition . . . would be satisfied by the wearing of military uniform, but less than complete uniform will suffice.

(24) It may be objected that a headdress does not legally fulfil the condition that the sign must be fixed. Something of the nature of a badge sewn on the clothing should therefore be worn in addition.

(5) *The Levée en Masse.*

(29) A rising of "the inhabitants of a territory not under occupation who, on the approach of an enemy, spontaneously take up arms to resist the invading troops without having had time to organise themselves" is spoken of as a *levée en masse*. Such inhabitants are recognised as having the privileges of belligerent forces if they fulfil the last two conditions laid down for irregulars; these are: to carry arms openly and to conduct their operations in accordance with the laws and customs of war. They are exempt from the obligations of being under the command of a responsible commander and wearing a distinctive sign. . . . The inhabitants of a territory already invaded by the enemy who rise in arms do not enjoy the privilege of belligerent forces.

(30) The rules which affect a *levée en masse* should be generously interpreted. The first duty of a citizen is to defend his country, and provided he does so loyally he should not be treated as a marauder or criminal.

(31) The word territory in this relation is not intended to mean the whole extent of a belligerent State, but refers to any part of it which is not yet invaded.

(32) Thus if an enemy approaches a town or village with the purpose of seizing it, the inhabitants, if they defend it, are entitled to the rights of regular combatants, as a *levée en masse*, although they wear no distinctive mark : in this case all the inhabitants of a town may be considered legitimate enemies until the town is taken.

(34) The privileges granted to irregular combatants by Article I. of The Hague Rules (see section 20) apply whether these combatants are acting in immediate combination with a regular army or separate from it.

(35) . . . Inhabitants who have legitimately taken up arms cannot afterwards change their status back to that of peaceful inhabitants. Even if they lay down their arms and return to their peaceful avocations they may be made prisoners of war.

(37) It is not . . . for officers or soldiers in deter-

mining their conduct towards a disarmed enemy to occupy themselves with his qualifications as a belligerent; whether he belongs to the regular army or an irregular corps, is an inhabitant or a deserter, their duty is the same: they are responsible for his person and must leave the decision of his fate to competent authority. No law authorises them to have him shot without trial: and international law forbids summary execution absolutely. If his character as a member of the armed forces is contested, he should be sent before a court for examination of the question.

### *Coloured Troops*

(38) Troops formed of coloured individuals belonging to savage tribes and barbarous races should not be employed in a war between civilised States. The enrolling, however, of individuals belonging to civilised coloured races and the employment of whole regiments of disciplined coloured soldiers is not forbidden.

### (6) *The Means of Carrying on War*

(39) The first principle of war is that the enemy's powers of resistance must be weakened and destroyed. The means that may be employed to inflict injury on him are not, however, unlimited. They are, in

practice, definitely restricted by international conventions and declarations, and also by the customary rules of warfare. And, moreover, there are the dictates of religion, morality, civilisation, and chivalry which ought to be obeyed. The means include both force and stratagem.

*The Means of Carrying on War by Force*

(40) . . . Killing and disabling the enemy combatants ; constraining them by defeat or exhaustion to surrender, that is taking them prisoners : and the investment, bombardment, or siege of fortresses. How far an invader is allowed to damage, destroy, or appropriate property and injure the general resources of a country will be considered later.

(IA) *Killing and Disabling the Enemy Combatants*

(41) The international agreements limiting the means of destruction of enemy combatants are contained, apart from Article 23 of The Hague Rules, in four declarations by which the contracting parties, of which Great Britain is one, engage :

(i.) " to renounce in case of war among themselves the employment . . . of any projectile of a weight below 400 grammes (approximately 14 oz.) which is either explosive or charged with fulminating or inflammable substances.



(ii.) "to abstain from the use of bullets with a hard envelope which does not entirely cover the core or is pierced with incisions ;

(iii.) "to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases ;

(iv.) "to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of similar nature."

(43) The use of poison and poisoned weapons is forbidden . . . (and) means calculated to spread contagious diseases.

(44) The deliberate contamination of sources of water by throwing into them corpses or dead animals is a practice now confined to savage tribes. There is, however, no rule to prevent measures being taken to dry up springs, and to divert rivers and aqueducts.

(46) Assassination and the killing and wounding by treachery of individuals belonging to the hostile nation or army are not lawful acts of war.

(47) . . . The proscription or outlawing of any enemy, or the putting a price on an enemy's head, or any offer for an enemy "dead or alive" is not permitted.

(48) It is forbidden to declare that no quarter will be given.

(50) It is forbidden to kill or wound an enemy who, having laid down his arms, or having no longer means of defence has surrendered at discretion.

(51) . . . No vengeance can be taken because an individual has done his duty to the last but escaped injury.

(52) Care must be taken that all ranks are acquainted with the laws of war and that they endeavour to obey them.

(53) A belligerent is not justified in at once dispensing with obedience to the laws of war on account of their suspected or ascertained violation on the part of the adversary.

#### *(7) Of the Taking of Prisoners*

(62) Wounded and sick when captured are prisoners, but the members of the medical personnel are not as a rule made prisoners.

(63) Chaplains . . . so long as they confine themselves to their spiritual duties, cannot be made prisoners of war : if captured they must be released under conditions similar to those applicable to the medical personnel.

(66) Prisoners of war are in the power of the enemy

Government and not of the individuals or units capturing them, and they must be humanely treated.

(68) . . . It is permissible to employ every means, provided they are humane and not compulsive, to obtain all the information possible from prisoners with regard to the numbers, movement, and location of the enemy. A prisoner cannot, however, be punished for giving false information about his own army.

(80) A commander may not put his prisoners to death because their presence retards his movements or diminishes his means of resistance by necessitating a large guard, or by reason of their consuming his supplies, or because it appears certain that they will regain their liberty through an impending success of their army. Whether nowadays such extreme necessity can ever arise as will compel a commander on grounds of self-preservation to kill his prisoners may well be doubted. <sup>1</sup>

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<sup>1</sup> The American instructions 1863, Art. 60, read: "in great straits when his own salvation make it impossible for him to cumber himself with prisoners." For the German *Kriegsbrauch*, see p. 123. According to the Manual of Military Law, the killing of prisoners in cold blood had not, until the present war, been authentically reported since 1799, when Napoleon had 3,563 Greeks killed at Jaffa.—(B. M.)

(86) Prisoners must not be regarded as criminals or convicts. They are guarded as a measure of security and not of punishment.

(92) The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity. The work must not be excessive, and must have no connection with the operations of war. Such work should be paid for at the same rates as are authorised for similar work of soldiers of that State, or if no rates are laid down, then at reasonable prices.

(95) Officers who are prisoners must be given the same rate of pay as officers of corresponding rank in the army of the country where they are detained. The amount must be refunded by their own Government. There is no obligation to pay the rank and file.<sup>1</sup>

(112) Legally constituted charitable societies formed for the purpose of assisting prisoners of war, must be given facilities for carrying out their task . . .

(8) *Bombardments, Assaults and Sieges*

(117) Investment, bombardment, assault, and regular siege . . . are . . . strictly limited to de-

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<sup>1</sup> In 1870-71 the German rank and file prisoners in France received food and seven centimes a day; the French rank and file prisoners in Germany received no pay.—*Manual of Military Law*.

fended localities ; the bombardment or attack, by any means whatever, of undefended towns, villages, and buildings, whether fortified or not, is forbidden.

(119) The defended locality need not be fortified, and it may be deemed defended if a military force is in occupation of, or marching through it.

(121) . . . It is not permissible to burn public buildings or private houses (in a fortress or defended locality) simply because it has been defended (before surrender).

(122) No legal duty exists for the attacking force to limit bombardment to the fortifications or defended border only. On the contrary, destruction of private and public buildings by bombardment has always been, and still is, considered lawful, as it is one of the means to impress upon the local authorities the advisability of surrender.

(124) . . . The commander of an attacking force must do all in his power to warn the authorities before commencing a bombardment, unless surprise is considered to be an essential element of success. There is, however, no obligation to give notice of an intended assault.

(127) There is no rule which compels the commander of an investing force to allow all non-combatants, or even women, children, aged, sick and wounded, or the subjects of neutral Powers, to leave the

besieged locality. The fact that non-combatants are besieged together with combatants . . . may and often does exercise pressure on the authorities to surrender.

(133) . . . All necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected.

(136) Edifices for which inviolability is thus claimed must not be used at the same time for military purposes. . . . If this condition is violated the besieger is justified in disregarding the sign.

(138) The giving over to pillage of a town or place, even when taken by assault, is forbidden.

(ii.) *The Means of Carrying on War by Stratagem*  
(*Ruses*)

(139) Ruses of war are the measures taken to obtain advantage of the enemy by mystifying or misleading him. They are permissible provided they are free from any suspicion of treachery or perfidy and do not violate any expressed or understood agreement. Belligerent forces must constantly be on their guard against, and prepared for, legitimate ruses, but they should be able to rely on their adversary's good faith and his observance of the laws of war.

(140) Good faith is essential in war, for without it hostilities could not be terminated with any degree of safety short of the total destruction of one of the contending parties.

(141) Should it be found impossible to count on the loyalty of the adversary, there is grave danger of war degenerating into excesses and indiscriminate violence, to avoid which has been the aim of the modern laws of war.

(149) The improper use of the distinctive signs of the Geneva Convention is forbidden.

(152) The employment of a national flag, military insignia, and uniform of the enemy for the purpose of ruse is not forbidden, but The Hague Rules prohibit their *improper* use, leaving unsettled what use is proper and what is not. Theory and practice are unanimous in forbidding their employment during a combat, that is, the opening of fire whilst in the guise of the enemy. There is, however, no unanimity with regard to the question whether the uniform of the enemy may be worn and his flag displayed for the purpose of effecting approach or retirement.

#### (10) *Espionage and Treason*

(169) A spy, even when taken in the act, must not be punished without previous trial.

*(11) The Sick and Wounded and Dead*

(By Article 174, the sick and wounded, etc., are to be treated according to the Geneva Convention of 1906.)

(175) The first and most important obligation is that sick and wounded persons . . . must be respected and taken care of, without distinction of nationality, by the belligerent in whose power they may be.

(176) As this obligation might prove too onerous for a victor left in possession of a battlefield . . . it has been agreed that a belligerent who is compelled to abandon sick and wounded to his foe, must, so far as military exigencies permit, leave behind with them a portion of his medical personnel to take care of them, and the necessary material.

(179) After an engagement the commander in possession of the field must take measures to have search made for the wounded and to protect them against acts of pillage and maltreatment.

(180) Measures must also be taken to punish very severely any such acts whether committed by persons subject to military law or civilians.

(181) A nominal roll of all wounded and sick who have been collected must be sent as early as possible to the authorities of the country or army



to which they belong. The proper channel . . . is the Prisoners of War Information Bureau.

(187) It is expressly permitted that the medical personnel and medical orderlies may be armed, and may use their arms for their own defence, or for that of the patients under their charge, against marauders and such like.

(ii) *Captured Medical Personnel*

(194) . . . . The personnel of medical units . . . may not be treated as prisoners of war. . . . Only when its assistance is no longer indispensable must it be sent back to its own army or its own country.

(200) While members of the enemy's medical personnel are in his hands, a belligerent must grant them the same allowances and the same pay as are given to persons holding similar rank and status in his own army.

(vii.) *The Dead*

(217) The dead must be protected against pillage and maltreatment.

(218) The military identification marks or tokens found on the dead must be sent to the authorities of the army or country to which they belong as early as possible.

(219) Before the dead are buried or cremated they must be carefully examined to see that life is extinct.

(220) . . . Valuables, letters, etc., found on a field of battle or left by the sick or wounded who die . . . must be collected and transmitted to the persons interested, through the authorities of their own country.

(12) *The General Effects of Occupation*

(333) The occupation of enemy territory during war creates a condition entirely different from subjugation though annexation of the territory. During the occupation by the enemy the sovereignty of the legitimate owner of the territory is only temporarily latent, but it still exists and in no way passes to the occupant. The latter's rights are merely transitory, and he should only exercise such power as is necessary for the purposes of the war, the maintenance of order and safety, and the proper administration of the country.

(339) It is no longer considered permissible for him to work his will unhindered, altering the existing form of government, upsetting the constitution and the domestic laws, and ignoring the rights of the inhabitants.

(335) The occupant, therefore, must not treat the country as part of his own territory, nor consider the inhabitants as his lawful subjects. He may, however, demand and enforce such measures of

obedience as is necessary for the security of his forces, the maintenance of order, and the proper administration of the country.

(357) The occupant can claim certain services from the inhabitants and may impose upon them such restrictions as he judges necessary. He can, under certain conditions, requisition, seize and destroy their property, and they may in various other ways have to suffer under the effects of the war.

(372) The occupant must not create new taxes, as that is the right of the legitimate Sovereign, and temporary possession does not confer it; but, as will be seen, he may raise money by contribution.

(387) It is the duty of the occupant to see that the lives of the occupants are respected . . . and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property are just as punishable as in times of peace.

(385) No collective penalty, pecuniary or otherwise, may . . . be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

(388) The personal services of the inhabitants may be requisitioned for the needs of the army . . . provided the services required do not directly

concern the operations of war against their own country.

(391) This prohibition . . . excludes their being requisitioned to construct entrenchments, and fortifications, although nothing prevents their being offered payment to induce them to undertake such work voluntarily.

### (13) *Treatment of Enemy Property*

(407) Private property must be respected: it may not be confiscated or pillaged, even if found in a town or place taken by assault. . . . Theft and robbery are punishable in war as in peace. . . . The right of an army to make use of and requisition certain property is fully recognised. What is forbidden is such damage, destruction, improper seizure or taking of property as is not required in the interests of the army. . . .

(413) When buildings of absent owners are made use of, care should be taken that they are reasonably treated. The fact that the owners are away does not authorise pillage or damage. A note should be left if anything is taken. . . .

(414) The custom of war permits as an act of reprisal the destruction of a house, by burning or otherwise, whose inmates without possessing the rights of combatants, have fired on the troops.

Care must, however, be taken to limit the destruction to the property of the guilty.

(416) . . . The taking of food and fuel supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like . . . is forbidden unless they are actually required for the needs of the army. They must be duly requisitioned, and the amount taken must be in proportion to the resources of the country.

(417) Articles requisitioned should be paid for in ready money, but if this is not possible a receipt must be given for them and . . . payment made . . . as soon as possible.

(419) Requisitions of supplies may be made in bulk; that is, a community may be called on to supply certain quantities . . . and soldiers quartered (on the inhabitants). . . .

(422) Supplies in the hands of private inhabitants may not be destroyed simply for fear that the enemy should make use of them later.

(423) Cash, over and above taxes, may be requisitioned from the inhabitants, and is then called a "contribution". . . . It can only be applied to the needs of the army or of the administration of the territory in question.

(424) A contribution should not be exorbitant, and may no longer be used as a means of pressure or of punishment.

(ii.) *Public Property*

(426) Real property belonging to the State which is of a military character . . . may be damaged or destroyed. . . .

(427) Real property belonging to the State which is essentially of a non-military character may not be damaged unless its destruction is imperatively demanded by the exigencies of war.

(428) The occupant may . . . let or utilise public land . . . sell crops on public land, cut and sell timber, work the mines . . . but the cutting or mining must not exceed what is necessary or usual and must not be an abusive exploitation.

(429) . . . . Local, that is to say, provincial, county, municipal and parochial property . . . as the property dedicated to public worship, charity, education, science and art . . . must be treated as private property.

(431) Other movable public property, not directly susceptible of military use . . . must be respected.

(434) General devastation of enemy territory is, as a rule, absolutely prohibited, and only permitted . . . when "imperatively demanded by the necessities of war."

(14) *Means of Securing Legitimate Warfare*

(435) Scarcely any war has taken place without complaints having been made of illegitimate acts. . . .

In some cases belligerent governments themselves . . . have been accused of illegitimate acts or of refusing to punish alleged illegitimate acts of their soldiers.

(436) The convention respecting the laws and customs of war on land foresees the possibility of illegitimate acts and lays down that: "A belligerent party which violates the provisions of the Rules (annexed to the convention, known as The Hague Rules) shall if the case demands be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." . . . Perpetrators of . . . particular offences of seizure, damage or wilful destruction of . . . historic monuments, etc., shall be prosecuted.

(437) As war is the last remedy of governments for injuries, no means would appear to exist for enforcing reparation for violations of the laws of war. Practically, however, legitimate warfare is, on the whole at least, secured through normal means recognised by international law. Moreover, it is in the interest of a belligerent to prevent his opponent having any justifiable occasion for complaint, because no Power, engaged in a national war, can afford to be wholly regardless of the public opinion of the world.

(ii.) *Complaints, Good Offices, Mediation and Intervention*

(439) As diplomatic intercourse between the contending States is broken off during war, complaints are either sent to the enemy under protection of a flag of truce, or through a neutral State. . . . Complaints may also be lodged with neutral States, with or without a view to soliciting their good offices, mediation, or intervention for the purpose of making the enemy observe the laws of war. . . . Occasionally the foreign Press is made use of for enlisting foreign public opinion against the enemy.

(iii.) *The Punishment of War Crimes*

(442) . . . War crimes may be divided into four different classes :

(i.) Violations of the recognised rules of warfare by members of the armed forces ;

(ii.) Illegitimate hostilities in arms committed by individuals who are not members of the armed forces ;

(iii.) Espionage and war treason ;

(iv.) Marauding.

(443) The more important violations are the following : Making use of poisoned and otherwise forbidden arms and ammunition ; killing of the wounded ; refusal of quarter ; treacherous request



of quarter ; maltreatment of dead bodies ; . . . ill-treatment of prisoners of war ; . . . firing on undefended places ; . . . firing on the flag of truce . . . bombardment of . . . privileged buildings ; poisoning of wells and streams ; pillage and purposeless destruction ; ill-treatment of inhabitants in occupied territory. . . . The members of the armed forces who commit such violations . . . as are ordered by their Government or by their commanders are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to the other means of redress which are dealt with in this chapter.

(449) In every case (of war crimes) there must be a trial before punishment, and the utmost care must be taken to confine the punishment to the actual offender.

#### (14) *Reprisals*

(452) Reprisals . . . are retaliation for illegitimate acts of warfare, for the purpose of making the enemy comply in future with the recognised laws of war. . . . They are by custom admissible as an indispensable means of securing legitimate warfare. The mere fact that they may be expected

if violations of the laws of war are committed acts to a great extent as a deterrent. . . .

(454) Reprisals are an extreme measure because in most cases they inflict suffering upon innocent individuals. In this, however, their coercive force exists, and they are indispensable as a last resource.

(456) . . . As a rule the injured party would not at once resort to reprisals, but would first lodge a complaint with the enemy. . . . This course should always be pursued unless the safety of the troops requires immediate drastic action. . . .

(457) . . . It should be considered, before resorting to reprisals, whether the enemy is not more likely to be influenced by a steady adherence to the laws of war on the part of his adversary.

(458) Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be considered collectively responsible, it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified.

(459) . . . Acts done in the way of reprisals . . . must not exceed the degree of violation committed by the enemy.

(15) *The Taking of Hostages*

(461) . . . The Hague Rules do not mention hostages, and . . . in modern times it is deemed preferable to resort to territorial guarantees instead of taking hostages.

(463) Such measures (as placing prominent inhabitants on the engines of trains . . . for the purpose of ensuring the traffic from interruption by the native population of occupied territory) expose the lives of innocent inhabitants not only to the illegitimate acts of train wrecking by private enemy individuals, but also to the lawful operations of raiding parties of the armed forces of the belligerent, and cannot therefore be considered a commendable practice.

(16) *Rights and Duties of Neutral Powers and Persons*

(The written law concerning the rights and duties of neutrals is contained in the "Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land," agreed upon at the Peace Conference of 1907.)

(468) The territory of a neutral Power must not be violated by belligerents and must not, therefore, be made a theatre of operations. Belligerents are expressly forbidden to move troops or convoys . . . across it. . . . Should, however, one belligerent

violate neutral territory by marching troops across it and the neutral Power be unable or unwilling to resist the violation, the other belligerent may be justified in attacking the enemy there.

(470) A neutral Power must not allow, and may even resist by force, any attempt to violate its neutrality. Such resistance cannot be regarded as a hostile act, for it is the duty of the neutral State.

(477) . . . It is not forbidden to obtain arms, ammunition, and stores from subjects of neutral States through the usual commercial channels. . . .

Such are the provisions of International Law as recognised by England (and actually by Germany) as the laws of warfare. But Germany has always accepted such laws with the reservation that they give way to military necessity.

THE END

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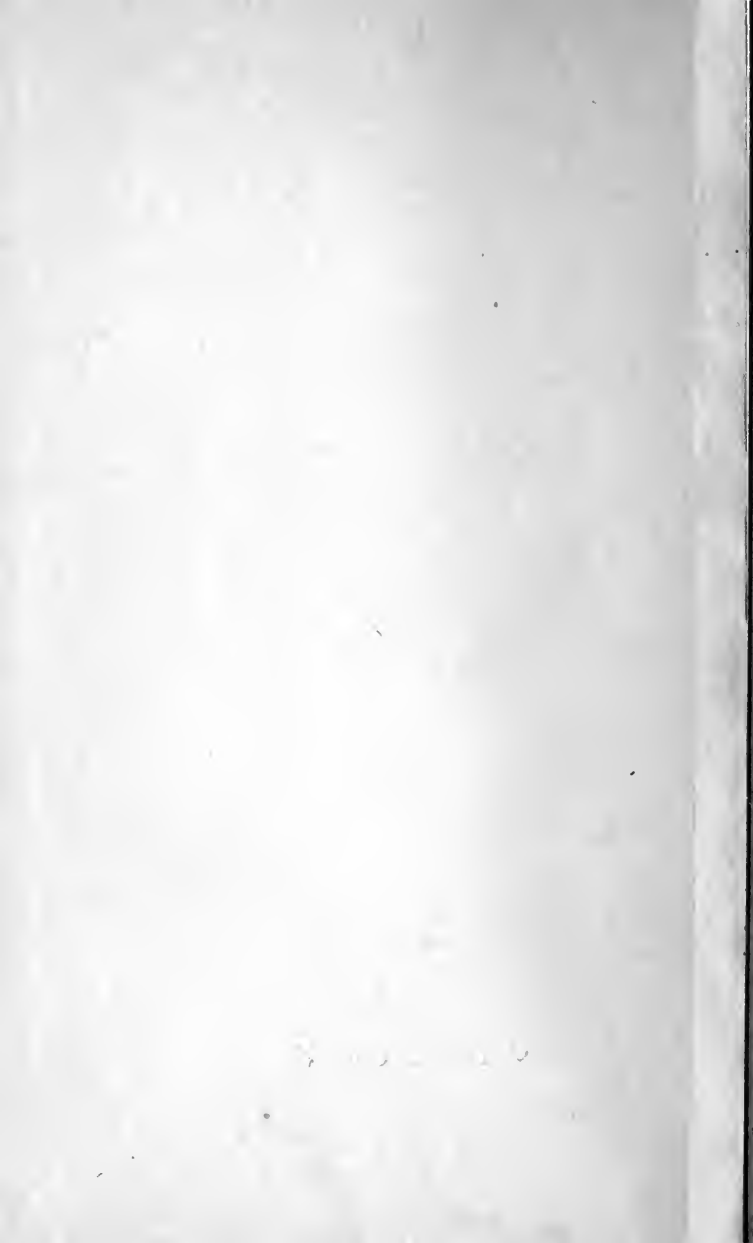
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